

# Submission to the Independent Review of the National Legal Assistance Partnership Agreement

27 October 2023



Community Legal Centres  
Australia

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# Introduction

## Acknowledgement of country



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

## About this submission

This submission sets out Community Legal Centres Australia’s commentary and recommendations regarding the National Legal Assistance Partnership Agreement 2020 – 2025 (NLAP). Our submission is grounded in the stories of the more than 130 people from across our sector who participated in consultations we conducted in August and September 2023, in preparation for this review. In the interests of brevity, we have drawn out common themes and focussed on highlighting the ways in which the NLAP has not worked for our sector. We do, however, recognise the diversity of centres’ experiences across different states and territories, generalist and specialist centres, and metro and regional, rural, remote, and very remote communities. Where experiences have been poor, they have not always been uniformly so. At the same time, the benefits of positive experiences have not been equally or equitably shared across jurisdictions, regions, or services.

We understand that many of our direct members (the eight state and territory community legal sector peaks), national community legal sector networks (including the RRRR Network and the Disaster Legal Services Network), and individual centres will also make submissions. We have worked collaboratively with our members and membership networks to ensure that our recommendations are consistent (to the extent possible), and that jurisdictional and individual centres’ submissions complement the national submission, by providing more nuanced data and evidence about local experiences. These submissions should be read together.

This submission addresses each of the questions set out in the Issues Paper. However, we address them in a slightly different order. First, we provide some observations on legal assistance services for Aboriginal and Torres Strait Islander people and communities, and the overall effectiveness of the NLAP. We then address legal need, roles and responsibilities, funding models, and demand over time consecutively. Many of the remaining issues (RRRR, disasters, advocacy, workforce, early intervention, and wrap around services) are considered in the section on funding models. This reflects their critical importance to community legal sector service delivery and to determining the appropriate quantum of funding for our sector to meet legal need. The submission concludes with our reflections on efficiency, data, and Commonwealth administrative review.

## About Community Legal Centres Australia

Community Legal Centres Australia is the national representative voice for the community legal sector. We are an independent, not-for-profit organisation set up to support the community legal sector to provide high-quality free and accessible legal and related community services to everyday people, especially people experiencing social or economic disadvantage, discrimination, or domestic and family violence.

We strive to be leaders in good practice, to be responsive to the needs of the community legal sector, to maintain and strengthen the collaborative networks that allow our sector to provide holistic support to communities, and to advocate for justice and the promotion and protection of human rights.

Our members are the eight state and territory community legal sector peak bodies. Together, we represent 154 community legal centres and women's legal centres, eleven Family Violence Prevention Legal Services and two Aboriginal and Torres Strait Islander Legal Services operating in metropolitan, regional, rural, remote, and very remote communities across Australia.

Our movement's vision is for a fair and equitable society in which:

- Our legal systems and institutions are accessible to all, decolonised, and no longer criminalise poverty, disadvantage, or disability
- All members of our community have access to the power, tools and means to live safe, secure, and meaningful lives, free from discrimination, violence, exploitation, and abuse
- We respect and protect the rights of First Nations people and communities to land, language, culture, and self-determination.

We respect and protect the natural environment for current and future generations.

Our expertise is grounded in the stories of the 200,000 people who engage our sector's services each year and who experience first-hand the barriers to justice that exist in our legal system. Our public advocacy ensures that their voices and experiences drive progressive system reform.

## Recommendations

### Aboriginal and Torres Strait Islander services

The Review should:

- Carefully consider recommendations made to the review by National Aboriginal and Torres Strait Islander Legal Services (NATSILS) and the National Family Violence Prevention Legal Services Forum (The National Forum).

Commonwealth, state, and territory governments should:

- Deliver significant additional funding to Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services (FVPLSs), and Aboriginal community-controlled community legal centres (ACCOs), including for service delivery, community engagement and outreach, law reform and advocacy, and workforce development
- Provide sustainable, long-term funding for ACCOs and specialist Aboriginal and Torres Strait Islander programs in mainstream community legal centres, that recognises the true costs of community outreach and engagement, and meeting complex needs in a culturally safe way
- Partner with ACCOs and specialist Aboriginal and Torres Strait Islander programs to develop outcomes-based reporting measures that reflect ACCOs and specialist Aboriginal and Torres Strait Islander programs' unique service delivery models and impacts
- Deliver additional funding to mainstream community legal centres to develop and maintain high levels of cultural competence to ensure that workplaces are culturally safe for Aboriginal and Torres Strait Islander workers, and services are culturally safe for Aboriginal and Torres Strait Islander people and communities.
- In the next NLAP, include commitments to achieving:
  - The priority principles of the National Agreement on Closing the Gap and a requirement for all levels of government to report publicly on how funding decisions and allocations align with these principles
  - Closing the Gap justice targets. This should include a statement recognising the interconnectedness of all of the Closing the Gap targets, and the specific contributions of ATSILSs, FVPLSs, and community legal centres to achieving all Closing the Gap targets.

### Legal needs

The Commonwealth Government should:

- Fund regular, independent, and objective legal needs analyses, which appropriately account for place-based, demographic, and specialist needs, including the unique needs of people in rural, regional, remote, and very remote communities
- Use the outcomes of regular, national needs analyses to determine the appropriate quantum and allocation.

Commonwealth, state, and territory Governments should:

- Partner with legal assistance providers to develop clear guidelines and a realistic timeframe for the transition to impact evaluation, and outcomes-based funding models
- Provide additional funding to legal assistance services to enable them to adopt impact evaluation and reporting.

## Roles and responsibilities

### Commonwealth government

Under the next NLAP, the Commonwealth government should:

- Continue to determine the proportion of overall NLAP funds to be allocated to community legal centres, ATSILSs, FVPLSs and LACs
- Increase the proportion of overall funding it allocates to community legal centres from the current level of about 14%. ATSILSs and FVPLSs should not receive less to achieve this outcome
- Play a greater role in directing how states and territories allocate Commonwealth legal assistance funding, including by issuing clear guidelines about timeframes for funding allocations and the policy objectives and outcomes to be achieved. In this context, we support the Commonwealth directing states and territories to establish – or increase funding for – peaks in all jurisdictions, collaborative service planning and data collection
- Monitor and publicly report on states and territories compliance with any guidelines it issues to direct funding during the life of the agreement.

### State and territory governments

The next NLAP should:

- Require states and territories to contribute funding to legal assistance providers, including community legal centres
- Require states and territories to deliver funding security through five-year (minimum) funding contracts for all baseline funding grants.
- Expressly prevent states and territories from delegating management of community legal sector programs to LACs
- Discourage states and territories from running open tender processes for community legal centre program funding and encourage, instead, co-design procurement processes
- Require states and territories to deliver greater transparency over funding allocation and distribution processes
- Require states and territories to improve transparency around procurement processes for community legal centres.

### Transparency

- The next NLAP should require states and territories to report annually to the Commonwealth on how they have allocated community legal centre funding
- The Commonwealth Government should release this information publicly, in a timely manner and in a way that enables state and territory comparisons.

## Funding

### Distribution

- The Commonwealth government should continue to determine what proportion of total Commonwealth legal assistance funding states and territories should allocate to legal assistance providers funded under the agreement (community legal centres, LACs, ATSILSs, and FVPLSs).
- At minimum, the Commonwealth government's funding distribution models should be adjusted to:
  - Take account of available quantitative and qualitative data to target funding to existing, unmet, and complex legal need.
  - Reflect the true cost and complexity of delivering services to RRRR communities, particularly Aboriginal and Torres Strait Islander communities.
  - Significantly increase baseline funding allocations and reduce reliance on ad-hoc, one-off investments in legal assistance services during the life of the next NLAP.

### Quantum

The Commonwealth Government should:

- Deliver significant additional funding to the legal assistance sector and to community legal centres, including:
  - An immediate injection of new funding into the legal assistance sector via the May 2024 federal budget to support service delivery until the current NLAP expires in June 2025. This injection should be of such a scale as to adequately account for legal need, inflation, rising wages, the mandatory superannuation guarantee, and data and reporting work
  - A significant increase in total Commonwealth funding for legal assistance services under the next NLAP – the specific amount should be determined taking into account the Law Council of Australia's 2018 recommendation that all governments should invest an additional \$390 million to legal assistance services
  - At least double the current level of Commonwealth funding for community legal centres service in the new NLAP (based on all legal assistance funding currently in the community legal centre service system)
  - An increase in the proportion of additional Commonwealth legal assistance funding allocated to community legal centres under the next NLAP (noting that any increase for community legal centres should not come at the expense of ATSILSs or FVPLSs)
- Take a principles-based approach to determining the appropriate quantum of funding for community legal centres under the next NLAP, which recognises that:
  - Community legal centres are grossly underfunded to meet need
  - The Commonwealth has a particular responsibility for ensuring community legal services are adequately funded
  - Funding arrangements should provide centres with maximum flexibility and limit unnecessary, additional reporting burdens
- Take account of the full range of functions that independent community legal centres require to meet need effectively.

In relation to annual **indexation** of Commonwealth NLAP funding:

- The next NLAP must provide a higher rate of indexation on all Commonwealth funding (baseline and additional injections), based on a formula that appropriately accounts for wage increases, CPI increases, and the much higher wage and CPI costs faced by services in RRRR communities
- The Commonwealth should examine the findings and recommendations from the review of the WA indexation model for community services and consider new models that emerge
- The Commonwealth should encourage all state and territory governments to work towards similar agreements on indexation of state and territory social services and legal assistance funding, where these don't already exist.

In relation to determining the **funding quantum required to meet legal need** in the community, Commonwealth, state, and territory governments should:

- Consider assessments of legal need in tandem with funding quantum
- When determining the funding required to meet legal need, consider the following factors:
  - The nature and extent of legal need in the community, including expressed and latent legal need
  - The outcomes to be achieved through legal assistance funding and a framework by which to measure achievements against these outcomes
  - The full suite of functions organisations require to deliver effective services to meet identified needs.

In relation to meeting needs in **RRRR** communities, Commonwealth, state, and territory governments should adjust legal assistance funding distribution models to:

- Give greater weighting to legal needs components (as compared to population components) particularly in jurisdictions where a high proportion of the population identifies as Aboriginal or Torres Strait Islander, or lives in remote or very remote locations
- Provide appropriate loading to centres servicing RRRR communities, including statewide specialist services, that accurately reflects the true cost of delivering services to these communities, including for infrastructure (vehicles, satellite phones, and other communications infrastructure), travel expenses (fuel, flights, and accommodation), face-to-face service delivery (including via outreach) and critical community engagement work
- Provide appropriate incentives to attract graduates and more qualified professionals to work in RRRR communities, including adequate remuneration loadings for remoteness and housing costs, HECS debt waivers for graduates who spend a minimum period working in RRRR centres (we suggest at least five years is appropriate), and incentives to keep local people in their communities.

In relation to meeting needs before, during and after **extreme weather disasters**, the Commonwealth government should:

- Deliver a significant increase in funding for legal assistance services, including place-based, generalist and specialist community legal centres, to engage in community and organisational resilience building and prevention work. The Commonwealth should deliver this funding via baseline NLAP allocations
- Provide adequate and timely surge capacity funding for specialist and generalist community legal centres that contribute to disaster response and recovery efforts via



the off-the-shelf disaster legal assistance funding package currently being developed by the Commonwealth Attorney General's Department. This funding should be sufficient for centres to meet:

- additional demand for services during response and recovery phases (noting that legal issues often emerge well after an extreme weather event and can have a long tail)
- demand for business-as-usual services, so that redirection of resources to respond to disasters doesn't create gaps in other service areas (like family law and domestic violence) or create additional pressures for surrounding services.

State and territory governments should:

- Partner with legal assistance providers, including community legal centres, to develop jurisdiction-specific disaster legal assistance response models, which adopt a mixed model of service delivery, recognises the unique contributions of specialist and generalist legal assistance services, and supports local response coordination where appropriate.

In relation to meeting needs aligned with **government priorities** and the costs to legal assistance services associated with **implementing legislative changes**, Commonwealth, state, and territory governments should:

- Closely consider potential impacts to people's ability to access justice (including the advice of legal assistance providers) and the community legal sector's capacity to absorb additional administrative burdens and operational costs
- Allocate adequate funding to meet additional legal needs, administrative burdens and operational costs generated.

In relation to meeting needs through **advocacy and law reform**

- The Commonwealth government should increase baseline NLAP funding for community legal centres to enable specialist and generalist community legal centres to undertake law reform and advocacy
- Under the next NLAP, the Commonwealth government should direct states and territories to establish and provide adequate funding for community legal sector peak bodies in every jurisdiction.

In relation to **building a strong, sustainable workforce, capable of meeting needs** Commonwealth, state, and territory governments should:

- Increase investment in the legal assistance sector to deliver pay parity across the legal assistance sector on a same work, same pay principle
- Invest in a national workforce development strategy to attract and retain a skilled, well supported, and diverse workforce to the legal assistance sector, which addresses (at minimum):
  - Remuneration and entitlements, including portable leave schemes
  - Consistent, efficient, and collaborative learning and development for all legal assistance workers
  - Career development pathways and strategies
  - The specific workforce challenges in RRRR communities
  - Recruitment and retention strategies.

- Increase investment in the legal assistance sector to address workforce challenges in RRRR communities, including:
  - Targeted graduate programs to attract new community lawyers, with a focus on Aboriginal and Torres Strait Islander graduates
  - National campaign and tailored incentives to attract law graduates and other professionals to work in RRRR legal assistance services for a set minimum period, including HECs debt waivers, one-off relocation payments, increased salary or leave entitlements.

In relation to meeting needs through **innovation, early support, and wrap-around services**

- Under the next NLAP, Commonwealth, state, and territory governments should:
  - explicitly recognise the cost-benefits, and positive impacts delivered to people and communities, through service innovation, early support, and wrap-around services
  - partner with legal assistance providers to develop and implement evaluation and reporting mechanisms that measure the impacts of this work
- The Commonwealth government should increase baseline NLAP funding for community legal centres to enable specialist and generalist community legal centres to pursue service innovations, and implement early support programs and wrap-around services as appropriate.

In relation to **ensuring community legal centres have access to the supports they need to** run effective services

The next NLAP should commit the Commonwealth, state, and territory governments to properly funding community legal sector peak bodies in all jurisdictions. This includes:

- Establishing funded community legal sector peaks in the ACT, NT, SA, and Tasmania
- Ensuring peaks in all jurisdictions receive funding sufficient to deliver effective supports and services to community legal services in their membership, including leadership and coordination, capacity building and development, accreditation and quality assurance, data and reporting, and advocacy and law reform.

## Demand over time

The next NLAP should:

- Cover a five-year period from 2025 – 2030
- Deliver funding security for all funded community legal centres, by mandating five-year funding contracts under the next agreement
- Allocate all funding (Commonwealth and state and territory) to community legal centres in one go, with no split between Commonwealth baseline and Family Law Family Violence allocations.

If a 10-year partnership agreement is to be considered, Commonwealth, state, and territory governments should partner with legal assistance providers to ensure a longer agreement includes:

- A significant increase in baseline funding that accounts for objective measures of legal need, and limits the need for multiple, additional one-off injections over the life of the agreement (to the extent possible)

- An adequate indexation clause
- Sufficient flexibility to ensure centres can adopt and absorb change.

## Disadvantaged groups

The next NLAP should include the following priority groups:

- Women, as a group distinct from people experiencing domestic and family violence.
- Refugees and asylum seekers, as a group distinct from people from culturally and linguistically diverse (CALD) backgrounds
- LGBTIQ+ people
- People impacted by extreme weather events and climate change.

## Efficiency

The Commonwealth and states and territories should work together to:

- Partner with legal assistance providers to develop and implement a single, annual reporting process for all Commonwealth and state legal assistance funding for community legal centres, including baseline and top-up NLAP funding
- Report annually to community legal sector peak bodies, and publicly, on progress towards this aim.

## Data

Commonwealth, state, and territory governments should:

- Partner with legal assistance providers to develop an improved approach to data collection that is clear about purpose, considers burdens on data collectors and funds the sector to do this work
- Provide significant additional funding for community legal centres to realise our ICDDT vision for the future
- Provide a clearer guide to, and timetable, and adequate resourcing for the shift to impact evaluation and outcomes-based reporting. Governments must also commit to ensuring this work does not undermine the impact work already done by centres in several states, including NSW, Qld, and Vic
- Develop an updated legal assistance data strategy under the next NLAP that explicitly recognises legal professional privilege, the duty of client confidentiality and State and Commonwealth privacy laws.

## The access to justice, technical, and resource implications for the collection of data from clients for legal assistance providers. Commonwealth administrative review

The Commonwealth government should consider:

- Using the current review of Commonwealth administrative review processes to implement substantial reform, and adopt human-centred design principles to develop a new system that is less adversarial, and more independent and investigatory
- Conducting a government policy review to ensure current policy approaches are not unnecessarily generating legal need
- Amending relevant legislation to strengthen model litigant provisions (and ensure/improve their application to government agencies)

- Providing additional funding to community legal services to assist people seeking to review Federal Government decisions
- Providing clearer guidance on when an applicant should be guaranteed access to legal assistance when seeking administrative review.

# Legal assistance for Aboriginal and Torres Strait Islander people

## Self-determination and a strong ACCO sector.

Community Legal Centres Australia strongly supports self-determination and appropriate resourcing of, and government support for, a strong Aboriginal community-controlled organisation (ACCO) sector. In making recommendations on strengthening the ACCO sector, and the funding arrangements and quantum needed to deliver access to justice for Aboriginal and Torres Strait Islander people, we have been guided by ACCOs in our membership. This includes two Aboriginal and Torres Strait Islander Legal Services (ATSILSs), eleven Family Violence Prevention Legal Services (FVPLSs), and three Aboriginal community-controlled community legal centres (which are neither ATSILSs nor FVPLSs).<sup>1</sup> These Aboriginal community-controlled community legal centres should be included in the review's recommendations about strengthening the ACCO sector, funding arrangements, and funding quantum.

We strongly support significant additional Commonwealth, state, and territory government investment in ATSILSs, FVPLS, and Aboriginal community-controlled community legal centres, whether through NLAP or through separate funding streams.

Critically, the next NLAP should also ensure greater Commonwealth government accountability for outcomes delivered for Aboriginal and Torres Strait Islander people and communities. Further, funding distribution models and state government allocation processes should be reformed to reduce or discourage competition for funding between ACCOs and mainstream organisations, and better support community-controlled and partnership approaches to legal assistance service delivery to Aboriginal and Torres Strait Islander people and communities. These points are relevant to the legal assistance sector broadly. We discuss them further in the sections on roles and responsibilities and funding models later in this submission.

We also deeply respect the guidance of the ATSILSs and FVPLSs specialist peaks, National ATSILS (NATSILS) and the National FVPLSs Forum. While we have not seen their submissions to NLAP, we respect their expertise and leadership on matters affecting First Nations peoples and encourage the government to give their submissions careful consideration. We strongly support the claims of NATSILS and the National FVPLSs Forum to additional funding for their sectors.

## Closing the Gap

Community legal centres strongly support all four principles in the National Partnership Agreement on Closing the Gap (National Partnership Agreement). We particularly support Principle 2, which recognises the importance of community-controlled service delivery and the need to adequately resource and support strong, sustainable ACCOs, including community controlled legal assistance services. We recommend including a commitment to

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<sup>1</sup> According to current records, there are three Aboriginal community-controlled community legal centres: Wirringa Baiya Aboriginal Women's Legal Service in NSW, the First Nations Women's Legal Service, and the Institute of Urban Indigenous Health in Qld.

achieving the priority principles of the National Partnership Agreement in the next NLAP and requiring governments to report on how funding decisions and allocations align with these principles.

We also support setting ambitious targets and taking strong action in partnership with Aboriginal and Torres Strait Islander people and communities towards meeting all the national Closing the Gap targets. Achieving these targets will require commitment to an Aboriginal-led, partnership approach, better recognition of the significant work many organisations contribute to national, state, and territory efforts to meet the targets, and significant additional investment of resources for ACCOs. For example, Wirringa Baiya Aboriginal Women's Legal Centre is responsible for coordinating work in NSW towards achieving Target 13: Families and households are safe. This is a big role for a small organisation that is already significantly underfunded to meet statewide demand for its specialist, trauma-informed services.

Achieving the Closing the Gap targets will also require governments and organisations to take a holistic and flexible approach to recognising and measuring contributions by ACCOs, and mainstream organisations that deliver Aboriginal programs, towards achieving these targets.

Although most community legal centres offer civil and family law services, a sizeable number assist with criminal and other matters of state responsibility that are subject to Closing the Gap targets, including youth justice and child protection. Further, the socio-economic, health, civil and family law, and criminal problems Aboriginal and Torres Strait Islander people face are often interconnected – rooted in intergenerational trauma, the ongoing impacts of colonisation, including systemic discrimination and exclusion, and entrenched poverty and disadvantage. Addressing these problems requires governments to recognise the intersections between all the Closing the Gap targets, commit to addressing them holistically, and take a more flexible approach to assessing whether and how different services contribute to achieving them.

For example, Aboriginal and Torres Strait Islander people's financial security (or insecurity) contributes to poor health and education outcomes, experiences of family violence, child removals, and incarceration rates. Financial Rights Legal Centre's (FRLC) Mob Strong Debt Help program offers financial counselling to Aboriginal and Torres Strait Islander people to improve their financial security. However, because there is no specific Closing the Gap target on financial security, and because reporting against the targets is siloed, the program was unable to secure National Indigenous Australians Agency Closing the Gap funding. This was despite the great results delivered, which contribute to improving health outcomes, and reducing rates of family violence, child removals, and incarceration in Aboriginal and Torres Strait Islander communities.

Mainstream specialist community legal centres can also make valuable contributions to achieving Closing the Gap targets through effective partnerships. For example, some partner with ATSILSs and other ACCOs to provide specialist legal expertise (including on credit and debt, social security, and other issues), when Aboriginal-led organisations do not have this expertise in-house.

**Recognising and counting ACCOs services to communities.**

ACCOs and specialist Aboriginal and Torres Strait islander programs (Aboriginal programs) deliver services to communities. Current reporting systems that count services to individuals don't accurately reflect how ACCOs work and the impacts they deliver, and how these align with the outcomes Aboriginal and Torres Strait Islander peoples themselves want to achieve. For example, the CEO of an ACCO operating in Qld, reported 77 Aboriginal clients in the last reporting period. However, that number fails to capture that through those individuals, the centre also supported hundreds more children at risk of losing connection to community, 99 of whom were living in RRRR areas, and 32 of whom were at risk of domestic and family violence.

Further, reporting systems don't capture the complex nature of working with Aboriginal people and communities, including the time spent on outreach in communities, engagement and trust-building, community development, slowly uncovering past trauma, and the breadth and complexity of current and past legal issues. ACCOs' (and specialist Aboriginal programs') service models reflect cultural and kinship practices, and account for intergenerational trauma, poverty, and other structural barriers. They also work to understand what good outcomes look like from their clients' perspectives, and work towards achieving these, something that current reporting overlooks altogether. Many employ client support officers who come from Aboriginal communities and work alongside lawyers to deliver holistic, trauma-informed services. This is an effective but often slow and resource intensive way of achieving meaningful outcomes for people and communities.

Measuring and funding these services against KPIs, or service targets, is not appropriate. Governments must partner with ACCOs and communities to understand the outcomes people and communities want to achieve, and co-design programs, and funding models, that recognise the unique approaches and solutions to the problems Aboriginal and Torres Strait Islander people and communities face.

### Funding advocacy and law reform work.

Aboriginal and Torres Strait Islander people and communities must have a voice in systemic policy and law reform conversations and processes. Under the community legal sector model, service delivery and systemic advocacy must go together. Given the over-representation of Aboriginal and Torres Strait Islander people in justice systems, and the ongoing impacts of colonisation, providing platforms for Aboriginal and Torres Strait Islander people to be heard and to drive solutions is a critical part of delivering access to justice for their communities.

Governments rely heavily on ACCOs to inform law reform processes, generally without providing any additional resourcing for this work. In the current static funding environment, some ACCOs report that overwhelming demand for services combined with limited resources has required them to focus on advice and service delivery, and reduced their capacity to engage in law reform.

At the same time, governments, courts, and legal systems continue to fail Aboriginal and Torres Strait Islander people and communities, ignoring their recommendations, and pursuing harmful and ineffective reforms. To properly recognise and resource Aboriginal-controlled community legal centres' law reform and advocacy work, funding should be delivered to:

- Resource in-house advocacy positions at ACCOs, including through dedicated roles, and through combined legal and advocacy, or community engagement and advocacy roles

- Enable outreach and community engagement/education to ensure advocacy workers can get out into community to hear voices and experiences on the ground
- Establish Aboriginal and Torres Strait Islander lived experience advisory groups to inform organisations' service delivery and systemic advocacy.

Governments should also establish and fund Aboriginal and Torres Strait Islander policy and law reform taskforces, and advisory bodies, to drive feedback to governments on systemic reforms, and to direct funding allocations to deliver these.

### Diverse communities. Diverse, accessible services.

Funding for ACCOs and Aboriginal programs within mainstream organisations needs to better recognise that different services, located in different communities, can look, and operate very differently. Services and programs operating in RRRR communities face specific challenges related to isolation, market failure, and persistent disadvantage. The kinds of legal and social problems people face can also look very different. As a result, centres in RRRR communities will often do very different work from services that support Aboriginal and Torres Strait Islander people in the cities.

One-size-fits-all approaches to funding ACCOs and Aboriginal programs do not work. Instead, funding models should ensure that all Aboriginal and Torres Strait Islander people have access to the same supports, whether they live in a remote community in the Northern Territory or in a major city.

### Workforce issues for ACCOs.

Through our national consultations we heard that ACCOs in our membership face particular challenges in relation to staffing, including where funding contracts set requirements for the number of Aboriginal and Torres Strait Islander staff. These challenges are heightened by the broader workforce issues in RRRR communities, which are discussed in greater detail later in this submission.

We have also heard that an inability to deliver adequate and appropriate services to their communities is a source of cultural harm for Aboriginal and Torres Strait Islander workers in our sector – in both ACCOs and mainstream services. Due to under-resourcing, inappropriate targets or service structures, or other factors outside of their control, ACCOs are often not able to meet people's and communities' needs holistically or in culturally safe ways. This causes Aboriginal workers psychological harm and impacts their wellbeing. This highlights the intersections between culturally appropriate support for communities, and culturally safe workplaces for Aboriginal and Torres Strait Islander workers. Community-controlled legal assistance services, and indeed all ACCOs, must be adequately and appropriately funded to meet people's and communities' needs in a culturally responsive and safe way, as well as to provide safe working conditions and appropriate supports for their workers.



## Supporting non-ACCOs to deliver culturally safe services

Many mainstream community legal services offer Aboriginal programs or support large numbers of Aboriginal and Torres Strait Islander people. In many cases, these programs have been operating for years, have strong records of effective service delivery, and are well regarded by local Aboriginal and Torres Strait Islander communities. They are an important part of the legal assistance service mix and should continue to be supported to deliver culturally safe, trauma-informed services to Aboriginal and Torres Strait Islander people who choose to access them.

### Choice in accessing justice and the legal system.

Some mainstream community legal centres support large numbers of Aboriginal and Torres Strait Islander people (for some centres in the Northern Territory, Aboriginal and Torres Strait Islander people make up 85% of total clients). These centres have worked hard to build trust with local communities and develop culturally safe, trauma-informed service models. In small communities, they make up an important part of the service mix and can be the first choice of service for some Aboriginal and Torres Strait Islander people, for example due to legal conflicts, family or community disputes, or where domestic and family violence is involved, and an Aboriginal woman may prefer to seek support from a women's legal service. Legal assistance services with strong records of engagement with and service to Aboriginal and Torres Strait Islander communities should continue to be funded as a critical component of the legal assistance response, especially for Aboriginal and Torres Strait Islander women experiencing domestic and family violence, for whom choice of service is particularly important.

### Filling a gap where there is no ACCO.

There are some areas of law that ACCOs do not specialise in (for example social security law). This means Aboriginal and Torres Strait Islander people will sometimes need to access legal assistance from a mainstream community legal centre when they face problems related to that area of law. These services are vital and should also be supported to be culturally safe.

In areas with few legal assistance services, if one ACCO experiences a period of difficulty (staffing, funding), there are significant flow-on impacts to other local services. All legal assistance services should be culturally equipped to support each other, and meet need in local communities, should the need arise.

### Community legal centres as a resource for ACCOs.

Community legal centres are committed to working in partnership with ACCOs and as noted above, can play an important role in supporting community-controlled services to meet Closing the Gap targets. This can occur through the provision of culturally safe, specialist services to ACCOs clients, providing specialist training and support to ACCO staff, and raising awareness about the existence of ACCO services in local communities. We note, however, that some centres expressed the view that governments can rely too heavily on community legal centres for awareness raising and should take on more direct responsibility for ensuring communities know about the availability of ACCO services in their communities.

To support effective partnerships between ACCOs and mainstream community legal centres, governments should allocate additional funding for the negotiation of proper sub-contracting and partnership arrangements between service providers to develop self-determined or co-planned service delivery.

### Supporting Aboriginal programs in mainstream centres.

Aboriginal workers who participated in our national consultation process expressed a view that there is a role for mainstream organisations to deliver Aboriginal programs. However, it is critically important that these organisations prioritise building culturally safe working environments for First Nations staff, and that governments adequately resource programs to succeed.

Participants expressed a view that governments and mainstream organisations sometimes set up Aboriginal programs to fail, or do not adequately resource them. For example (and as noted above), the National Indigenous Australians Agency declined to fund Financial Rights Legal Centre's Mob Strong Debt Help program with Closing the Gap funding, despite this program having delivered great results. Often, programs are allocated too few resources, or are set up as limited term pilots, which don't provide sufficient time for Aboriginal workers to build community trust and deliver outcomes, or offer them meaningful, full-time employment, job-security, and a living wage.

### Resourcing for mainstream centres to become culturally competent.

Mainstream community legal centres are also committed to delivering culturally safe services for Aboriginal and Torres Strait Islander people. Cultural safety is a mandatory standard within the sector's National Accreditation Scheme. Community Legal Centres Australia is currently reviewing and updating this standard in consultation with Aboriginal and Torres Strait Islander workers and mainstream centres across the continent. We will continue to work with state and territory peaks to support centres to prioritise cultural safety and implement and achieve this standard through regular accreditation.

Through our national consultations, Aboriginal and Torres Strait Islander people working in ACCOs and mainstream community legal centres identified several factors critical to building culturally safe organisations, attracting more Aboriginal and Torres Strait Islander workers, and delivering culturally safe services. These include:

- Ensuring all services for Aboriginal and Torres Strait Islander people are trauma informed
- Ensuring Aboriginal programs are delivered by Aboriginal and Torres Strait Islander people, are adequately staffed, and receive long-term funding that better reflects the time needed to build relationships of trust with local ACCOs and communities
- Prioritising investment in developing and implementing meaningful Reconciliation Actions Plans or cultural safety policies
- Providing regular training for all staff in trauma-informed practice, and cultural safety
- Offering regular, culturally safe supervision and debriefing for Aboriginal and Torres Strait Islander workers
- Improving workplace entitlements for Aboriginal and Torres Strait Islander workers, including cultural and bereavement leave, and adequate wages

- Providing job security, and career pathways for Aboriginal and Torres Strait Islander workers within mainstream organisations, including permanent roles.

Embedding these practices and entitlements requires a commitment from centres to prioritise cultural safety. Community legal centre funding needs to accommodate the true cost of building, and maintaining a high level of cultural competency, including culturally safe services for people and communities, and appropriate cultural supports for Aboriginal and Torres Strait Islander workers.

### Attracting and retaining Aboriginal and Torres Strait Islander workers.

A key element of delivering culturally safe services, is attracting, and retaining Aboriginal and Torres Strait Islander workers. This requires centres to offer job security, clear career pathways into management and leadership positions within mainstream organisations, and appropriate remuneration for Aboriginal and Torres Strait Islander Board Directors.

Some mainstream community legal centres employ Aboriginal and Torres Strait Islander workers in entry level jobs. The CLCNSW First Nations Cadetship Program is one example of an innovative approach to attracting more Aboriginal and Torres Strait Islander graduates (from a range of fields, including law, social work, and communications) into the community legal sector. However more needs to be done to develop support structures for Aboriginal programs and career pathways into leadership roles. This includes processes for ensuring community engagement and support roles can be backfilled when workers go on leave, and management training and experience for Aboriginal and Torres Strait Islander workers.

## Recommendations

The Review should:

- Carefully consider recommendations made by NATSILS and the National FVPLSs Forum.

Commonwealth, state, and territory governments should:

- Deliver significant additional funding to ATSILSs, FVPLSs, and Aboriginal-controlled community legal centres, including for service delivery, community engagement and outreach, law reform and advocacy, and workforce development
- Provide sustainable, long-term funding for ACCOs and established, effective Aboriginal programs in mainstream community legal centres, that recognises the true costs of community outreach and engagement, and meeting complex needs in a culturally safe way
- Partner with ACCOs and established Aboriginal programs to develop outcomes-based reporting measures that reflect ACCOs and specialist Aboriginal programs' unique service delivery models and impacts
- Support mainstream community legal centres' focus on developing and maintaining high levels of cultural competence to ensure that workplaces are culturally safe for Aboriginal and Torres Strait Islander workers, and services are culturally safe for Aboriginal and Torres Strait Islander people and communities
- In the next NLAP, include commitments to achieving:
  - The priority principles of the National Agreement on Closing the Gap and a requirement for all levels of government to report publicly on how funding decisions and allocations align with these principles
  - Closing the Gap justice targets. This should include a statement recognising the interconnectedness of all the Closing the Gap targets, and the specific contributions of ATSILSs, FVPLSs, and community legal centres to achieving all Closing the Gap targets.

# Issues for consideration

## Effectiveness

The current NLAP has delivered some benefits for the community legal sector and is an improvement on the previous National Partnership Agreement on Legal Assistance. The main benefits have included:

- Longer-term funding agreements for centres in some jurisdictions, notably the Australian Capital Territory (ACT), Queensland (Qld), and South Australia (SA)
- Some more regionally focused funding allocations (largely due to state and territory governments' allocation decisions)
- Consolidated funding and reporting requirements, minimising reporting lines, for some centres in relation to some funding streams.

However, this NLAP has not delivered on many of its objectives. The idea of governments working in partnership to support legal assistance providers to deliver high-quality and valued legal services to communities is a good one. But the NLAP is in many respects not a partnership at all, and in many ways, it fails to deliver for community legal services.

### **NLAP has not delivered adequate or secure funding for community legal centres.**

Critically, it has not provided adequate funding or funding security for the community legal sector nationally. The current agreement held out the promise of five-year funding security for centres, but this has not been delivered in jurisdictions other than Qld, SA, and the ACT. Centres in other jurisdictions have had four-, three-, or even two-year contracts. Tasmanian centres continue to receive one-year funding contracts, with some receiving contracted payments weekly in arrears. No state or territory government is offering funding security beyond 2025. By the time we see the NLAP review report, no centre will have more than 16 months' funding security. No centre can offer security of employment or service delivery in such an environment.

This NLAP failure to require states and territories to make their own contributions to legal assistance funding (or to provide additional Commonwealth funding to jurisdictions that have limited capacity to provide or administer extra funds, like the Northern Territory) has been very problematic. Some state and territory governments do make generous additional contributions to the legal assistance sector, including community legal centres. Overall, however, in every jurisdiction, almost all state and territory government funding for legal assistance services flows to Legal Aid Commissions (LACs). This has also resulted in very different experiences of funding adequacy and security across different states and territories, with flow on impacts for people and communities. The NLAP's approach to indexation has been similarly problematic.

The terms of NLAP hint at an interest in being a partnership that delivers funding security and streamlined systems of support, but for community legal centres in many jurisdictions the experience has been quite the reverse:

- The Commonwealth has separated baseline funding for community legal centres from Family Law Family Violence (FLFV) funding for no discernible gain
- States and territories have run separate processes to allocate baseline funding, FLFV funding, and state funding, meaning centres never have confidence in all three streams and spend an inordinate amount of time bidding for funds

- Too much government legal assistance funding has been offered for pilots with no pathway to ongoing funding (for example, the Temporary Visa Holders Experiencing Violence Pilot, which was first established in 2021 and for which the Commonwealth Department of Social Services extended pilot funding to January 2025 earlier this year).

### **Allocation and administration of special purpose funding has been flawed.**

In several instances, additional Commonwealth money dropped into NLAP since its commencement (special purpose funding) has been poorly allocated and administered. A key example is Commonwealth money initially announced on budget night 2021 as being for women's legal centres. Due to a subsequent change in Commonwealth government guidance, and different state and territory allocation processes, funds ended up being delivered entirely to women's legal centres in some jurisdictions, and entirely to other legal assistance providers elsewhere. In our sector's experience, this was the prime example of a funding allocation process not working as it should have. Other examples of poor allocation and administration processes include disaster response funding delivered in 2020, 2021, and 2022, and mental health funding delivered in 2021, which in some extreme cases took 17 months to reach centres struggling to meet increased demand with static resources.

### **Allocation processes fail to recognise the interdependence of centres within the community legal sector movement.**

The current NLAP, and its administration by some state and territory governments, does not adequately recognise the community legal sector as a cohesive movement of interconnected parts. Our generalist and specialist services depend on and support each other, and all levels of government have a responsibility to see both kinds of centres supported. Yet some jurisdictions don't fund specialist services at all.

We recognise this is, in part, because states' and territories' capacity to deliver additional funding varies. However, the impact for people and communities is that specialist services are not available where they're most needed. For example, in the Northern Territory there are no specialist social security, or consumer, credit, and debt services, despite high levels of demand. In such cases, there is a role for the Commonwealth to step in and ensure adequate funding for specialist service delivery is available in every jurisdiction according to need. However, under the current agreement, there are few examples of this occurring. Further, several state and territory governments have run competitive processes that require specialist and generalist centres to compete for funding, which demonstrates, to us, that they do not fully understand or appreciate the interdependence of these services.

State and territory governments also like, from time to time, to announce they are reorienting legal assistance funding to meet evolving need. In our experience, however, it's only community legal centres that get reoriented. Centres are too often required to participate in blunt and damaging processes – like open tenders – that result in static funds being redirected from one service – and one client group – to another. These processes put centres – and different groups of people experiencing disadvantage – in direct competition with each other for limited resources. And they create as many service gaps as they fill. From our perspective, there are few winners in processes like these that attempt to determine whether, in a zero-growth environment, refugees or Aboriginal women or at-risk youth are most deserving.

## **NLAP does not adequately fund early intervention, integrated services, or advocacy.**

Community legal centres have spent 50 years demonstrating the impacts of our service model: holistic, integrated and trauma-informed services, with a focus on early intervention and a commitment to advocating for systemic change. Indeed, governments regularly laud our work, but have still refused to fund the essential elements of our service model. Until recently, the Commonwealth government refused to resource centres' critical advocacy work – and in the case of the previous Coalition government, even to permit it. State governments have refused to allow NLAP and other state government funds for community legal centres to be used for non-solicitor roles, despite the critical:

- effectiveness of a holistic service model that utilises social workers, financial counsellors, community development workers, advocates, First Nations outreach and support workers and the like
- need for robust corporate services (like service leadership, office management and human resources, intake, quality assurance and training, data and reporting, and communications) to support effective service delivery.

Despite the rhetoric of support for early intervention, community legal centres in some jurisdictions have been required to comply with reporting regimes that prioritise easily countable deliverables, like legal advices, over the community development and community legal education (CLE) work that can prevent legal demand emerging in the first place. A more nuanced approach to government management of legal assistance programs is needed to support effective early intervention work that empowers people to understand their rights and available remedies and helps prevent legal problems from escalating.

## **NLAP has not delivered effective collaborative service planning or transitioned the sector to impact reporting.**

Beyond funding, the current NLAP has not delivered consistently in relation to moving the sector towards impact evaluation and reporting, or meaningful collaborative service planning. In many cases, state and territory legal assistance strategies, required by NLAP, underwhelm, and do not foster the collaborative service planning that NLAP encourages. Centres in many jurisdictions report encroachment of LACs into areas of work previously delivered by community legal centres. While we support clients having choices, state and territory legal assistance strategies are not facilitating the collaborative ventures NLAP seeks.

## **States' and territories' performance administering legal assistance funding varies.**

The current NLAP delegates management of the legal assistance sector to states and territories but does not set out minimum standards for performance or recognise – or cater for – different capabilities and resourcing levels across different jurisdictions. As a result, the performance of states and territories in managing the delivery of legal assistance varies. For example, a tender in NSW resulted in centre contracts with strict deliverables and targets that inhibited service responsiveness and flexibility. This contrasts with current practice in Victoria, where Community Legal Service Program (CLSP) agreements can involve centres proposing a workplan, and setting their own targets, deliverables, and outcomes.

In another example of poor practice, most states and territories manage community legal centre programs by siphoning off Commonwealth funds earmarked for our sector, but do not report transparently to centres on how this funding is utilised. Yet, there seems no

penalty for poor performance or support for smaller jurisdictions with less capacity overall than their larger counterparts.

**Delegation to LACs of state and territory responsibility for administering funding has been detrimental for community legal centres.**

The fact that this NLAP has enabled state and territory governments to delegate their funding administration responsibilities to LACs has also been detrimental for community legal services in some jurisdictions. Critically, as statutory organisations, LACs are a part of government architecture, and often have closer relationships with and stronger voices to government decision-makers than community legal centres, particularly in relation to funding decisions. Requiring departments of justice to administer all legal assistance funding will give our sector a greater seat at the table during governments' funding decision-making processes and improve collaborative service planning and delivery between community legal centres and LACs. It is an abrogation of state and territory government responsibility to delegate management of community legal centre programs to an LAC.

**Legal assistance funding frameworks create heavy administrative burdens for community legal centres.**

Current legal assistance funding frameworks also create heavy administrative burdens, with little return on investment, for many centres. Writing multiple reports to funding bodies delivers few benefits to centres and takes up precious time and resources they could more usefully direct to service delivery and strategic advocacy. Most centres have stories of having to report separately on different funding streams, sometimes even where these streams are managed by the same department. Centres that received new funding – for example for Covid, bushfire, or flood responses, to support vulnerable women, or to deliver legal supports to people experiencing mental ill-health – often also received separate contracts with separate reporting requirements – even where this money flowed from the Commonwealth via the NLAP.

Our members have expressed frustration and disappointment that many of the issues we raise here were raised also during the review of the previous National Partnership Agreement (2015 – 2020), and yet they remain unresolved. These include the failure to:

- Lock states and territories into contributing legal assistance funding
- Deliver funding security for community legal centres
- Deliver a consistent approach to – and transparency over – states' and territories' funding allocations to community legal centres across all jurisdictions
- Prevent states and territories from delegating their responsibility to administer community legal centre programs to LACs
- Support the legal assistance sector's transition to outcomes (rather than outputs) focused reporting (including through the provision of adequate resourcing for this work)
- Deliver effective collaborative service planning.

We have high hopes that substantial and transformative change will flow from this review.



## Legal needs

There is significant unmet legal need in the community. Current data on legal need is piecemeal and, in some cases, out of date. However, surveys and research conducted by various bodies over the last decade consistently show high levels of unmet legal need, particularly amongst people experiencing social and economic disadvantage.

In future, it would be ideal both for legal assistance services and for governments, to have consistently collected and regularly updated contemporary data on legal need to drive funding allocations. In the interim, there is much we already know and can draw upon.

Over the past decade, multiple comprehensive national surveys, inquiries, and reports have found consistent high (and increasing) levels of unmet legal need across this country. These include the:

- Law and Justice Foundation of NSW's Laws Australia Wide Survey<sup>2</sup>
- Australian Productivity Commission's inquiry into access to justice arrangements<sup>3</sup>
- Law Council of Australia's Justice Project.<sup>4</sup>

Most recently, the Victorian Law Foundation released its first report on findings from the Public Understanding of Laws Survey (PULS) in August 2023.<sup>5</sup> High level findings include that 42% of respondents experienced one or more everyday legal problems over the previous 2 years and that the experience of multiple everyday legal problems is closely linked to disadvantage. Almost half of people surveyed who experienced financial disadvantage reported five or more everyday legal problems.

Community Legal Centres Australia collects data on the number of people community legal services turn away each year via our national State of the Sector Survey. Although imperfect, this 'turnaways'<sup>6</sup> data provides an additional measure of 'expressed' unmet legal need.<sup>7</sup>

Preliminary analysis of data from the 2023 State of the Sector Survey<sup>8</sup> shows 25% of community legal centres have formal methods of tracking unmet need, and 50% of centres have partial or informal methods. On average, centres that felt able to estimate turnaways had 23.8 turnaways per week, or 1237 turnaways per year per centre. Across all services in our membership network this translates to 200 000 per year.

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<sup>2</sup> Law and Justice Foundation of NSW (2012). Legal Australia Wide Survey:

<sup>3</sup> Productivity Commission (2014). Access to justice arrangements – Inquiry report: <https://www.pc.gov.au/inquiries/completed/access-justice/report>

<sup>4</sup> Law Council of Australia (2018). The Justice Project – Final report: <https://lawcouncil.au/justice-project/final-report>

<sup>5</sup> Victoria Law Foundation (2023). The Public Understanding of Laws Survey (Vol 1) – Everyday problems and legal need: <https://victorialawfoundation.org.au/research/puls>

<sup>6</sup> For the purposes of the State of the Sector Survey, we define a turnaway as a service not provided by a community legal service within the needed timeframe or because of a lack of resources, lack of centre expertise or a centre's eligibility policy. Turnaways count the number of services that could not be provided, not the number of people who could not be helped.

<sup>7</sup> An expressed legal need is a need or problem that a person recognises as a legal problem and takes steps to address by seeking advice or assistance. If a person seeks help from a legal assistance service, but is turned away because the service does not have capacity to assist, we call this an unmet expressed legal need.

<sup>8</sup> The 2023 State of the Sector Survey was open for responses from Tuesday, 3 October, to Wednesday 18 October. We have conducted preliminary data analysis, which we have provided to the review as a separate, confidential submission. We intend to publicly release the full survey report over the coming months.

The survey also asked centres about the main reasons they turned people away. Preliminary analysis shows that 60% of centres turned people away because they did not have capacity to assist at all or in the required timeframe.

Caxton Legal Service used a range of data, including phone records and service information entered to the Community Legal Assistance Service System (CLASS), to calculate the number of people the centre has turned away for services for which it receives NLAP funding from 1 July 2018 to 30 June 2023. These data provide a much more granular picture of the level of unmet demand for community-based legal assistance services. The case study below highlights at least three points at which people may be turned away from a community legal centre, without having their legal needs fully met.

Over five years Caxton Legal Service:

- Received approximately 150 000 calls for assistance and provided 126 613 legal information services. That is, the centre was not able to answer and assist approximately 25 000 people who contacted the centre. This provides a first-tier turnaway figure of almost 16%.
- Provided legal advice services to 25 530 callers or approximately 17% of all people who called the centre for assistance. This provides a second-tier turnaway figure of 83% of all answered calls.<sup>1</sup>
- Provided 1451 representation or casework services. This represents less than 1% of the initial calls for assistance and represents the third-tier turnaway figure.

This analysis highlights the fact that the NLAP has always produced a competitive funding and service environment in which many centres commit to attend primarily to breadth with limited depth. This issue is addressed further in the section on legal needs below.

### Regular, comprehensive legal needs analysis is essential

Regularly updated, nationally consistent data on legal needs would be invaluable in transitioning the legal assistance sector to a truly needs-based funding model. In our view, the onus should be on governments to resource this work at the national and state and territory levels, and to resource community legal services to undertake local needs analyses and outcomes evaluations.

To that end, community legal centres support the ongoing collection of data on legal need. The Law and Justice Foundation of NSW and the Victorian Law Foundation both have close connections with and a deep understanding of the work of community-based legal services. They are also both already undertaking sophisticated legal needs analyses in their respective jurisdictions. However, there is no equivalent work being undertaken in any other jurisdiction. This must urgently be addressed, either by funding and authorising the NSW and Victorian law and justice bodies to work beyond their establishing, or by

establishing and appropriately resourcing similar projects in all other jurisdictions. The Australian Bureau of Statistics (ABS) would also be well-placed to conduct this work.

We refer the reviewer to submissions and recommendations made by the National Rural Regional Remote and Very Remote Community Legal Services Network and the development of 4Rs research expertise.

### **Place-based disadvantage measures do not always capture specialised needs.**

The community legal sector supports client-centred, needs-based funding. Current legal needs analyses tend to have a heavy focus on place-based indicators such as socio-economic disadvantage and low educational attainment as proxies for legal need in any given geographic area. While these are extremely relevant factors impacting legal need, it is important that future needs analyses also reflect specialist legal needs, such as the legal needs of women, people living in 4Rs communities or impacted by climate disasters, and LGBTIQ+ people.

### **Legal need analyses should not be driven by a stop-gap approach.**

Legal assistance providers' capacity to meet legal need depends largely on governments' commitment to addressing it. Measuring legal need is difficult and resource-intensive, particularly when it comes to latent legal need. Government decision-making plays a role in which types of legal needs analyses are resourced and carried out, and, if wrongly carried out, results can be shaped to support existing government priorities. If, in future, legal needs analyses are to be conducted regularly, we recommend including a statement in the next NLAP that commits the governments of the day to ensuring they are conducted by a suitably qualified, independent body, and to include analysis of the full gamut of legal needs present in the community (rather than limited in any way by immediate policy priorities).

Addressing legal need must be considered in tandem with increased resourcing overall. Otherwise, it has been our sector's experience that in a fixed-envelope funding environment, legal needs assessments are just used to divert resources from one area of need to another. This generates gaps in service delivery at the same rate as gaps are plugged elsewhere and contributes to a lack of funding security for community legal services.

### **Legal assistance providers cannot meet existing legal need on current resources.**

Legal assistance providers cannot meet anywhere near existing levels of legal need on current resources. Community legal centres, ATSILSs, and FVPLSs, are particularly under-resourced to meet need.

Inadequate, piecemeal, and short-term funding makes it difficult for services to meet existing need, and near impossible to respond to emerging need. The extent to which legal assistance services can meet existing and future legal need will depend on the depth of governments' commitment to addressing social disadvantage and barriers to accessing justice, as evidenced by both funding quantum and allocation models for the legal assistance sector. As such, it is critically important governments consider assessments of legal need in tandem with funding quantum.

### **State and territory contributions to meeting legal need are inconsistent.**

One of the most significant factors shaping the ability of current legal assistance funding to meet legal need is the wildly varying contributions of state and territory governments. How

can any level of legal need be met where some state and territory governments make such paltry contributions to legal assistance with no penalty? The contributions of state and territory governments must also be part of the assessment of unmet legal need. Where state and territory governments do contribute additional funds, most flows to the LACs. In this context, we believe the Commonwealth has a particular responsibility for community-based legal assistance.

### **Community legal services need flexible funding to meet need.**

Current funding arrangements are significantly based on historical allocations, rather than emerging areas of legal need. Depending on the jurisdiction, funding contracts can restrict centres to quite specific programs and service mixes, limiting centres' ability to expand into new regions or practice areas, or to respond to changing demographics. Legal need in the community shifts over time, and community legal centre funding should be sufficiently flexible to allow centres to meet need as best they can.

### **Service targets hinder efforts to meet need in the most effective ways**

In many jurisdictions, NLAP funding agreements measure community legal centres' performance based on service targets or outputs. High service targets limit centres' ability to meet people's needs holistically. This kind of target incentivises centres to meet a person's discrete, immediate legal need, rather than to carry out the deeper types of work that meet the breadth of a person's legal and other needs.

Where they're used, state and territory governments have sometimes insisted on service targets across multiple domains (information, advice, representation etc.), which have then been rigidly imposed, meaning failure to meet any single target could be considered a breach of contract. This actively undermines the flexibility centres need to respond to the demand with which they are confronted.

While funding agreements are set up this way, centres are often forced to deliver a high volume of light touch, low-impact assistance, and to deprioritise deeper casework and representation services. The latter, more intensive services, are more expensive to deliver, yield lower service counts, but often have higher impact in terms of the beneficial outcomes they deliver for people and communities, particularly those experiencing the deepest and most persistent disadvantage, discrimination, and trauma.

This is clearly borne out in national community legal centres service data reported to CLASS. These data show that between 1 July 2018 and 30 June 2023, the ratio of one-off legal assistance to ongoing legal assistance delivered by community legal centres increased from 1:10 to 1:15. That is, in 2018 – 19, community legal centres delivered one ongoing legal assistance service for every 10 one-off services. In 2022 – 23, this had increased to one ongoing service to every 15 one-off service delivered.

### **Moving to impact evaluation is critical to delivering outcomes**

Assessing the effectiveness of legal assistance in meeting need requires much greater use of impact evaluation. Governments should stop focusing only on numbers of services delivered and partner with legal assistance providers to measure the impact of our work. We strongly support the expressed commitment to move the national legal assistance sector towards impact evaluation. This would add another layer of data to the evidence base needed to deliver needs-based funding and enable community legal centres to do the

high impact work they want to do. As noted above, however, governments' progress in this area under the current NLAP has been poor.

Where work is being done to implement outcomes-based reporting measures, the community legal sector is driving it. For example, funded state peaks in NSW, Qld, and Vic have all undertaken projects to develop outcomes frameworks for community legal centres in their membership. We refer the Review to submissions from CLCNSW, CLCQ and The Federation for further information on these projects.

### Recommendations

The Commonwealth Government should:

- Fund regular, independent, and objective legal needs analyses, which appropriately account for place-based, demographic, and specialist needs, including the unique needs of people in rural, regional, remote, and very remote communities
- Use the outcomes of regular, national needs analyses to determine the appropriate quantum and allocation.

Commonwealth, state, and territory Governments should:

- Partner with legal assistance providers to develop clear guidelines and a realistic timeframe for the transition to impact evaluation, and outcomes-based funding models, building on the work already done by community legal sector peaks
- Provide additional funding to legal assistance services to enable them to adopt impact evaluation and reporting.

## Roles and responsibilities

### Commonwealth to set overall allocations to legal assistance providers.

The national community legal sector supports the Commonwealth continuing to specify the proportions of Commonwealth funding that states and territories are to provide to each legal assistance subsector, that is community legal centres, Legal Aid Commissions (LACs), ATSILSs and FVPLSs (if the review recommends funding FVPLSs via the NLAP and that NATSILS remain within NLAP). If ATSILSs and FVPLSs are to be funded under a separate agreement, we support the Commonwealth continuing to specify the proportion of funding that states and territories are to provide to community legal centres and LACs.

### **ACCOs must receive significantly more funding under the next NLAP.**

In making these macro-level decisions, we strongly support additional Commonwealth funding to ATSILSs and FVPLSs under the next agreement, particularly in the context of the national commitment to achieving Closing the Gap targets expressed via the National Partnership Agreement on Closing the Gap 2020.

### **Community legal centres should receive a greater overall proportion of NLAP funds.**

All legal assistance providers require additional resources to meet demand. In a fixed funding environment, we do not support any one sector receiving less resourcing than it does at present, even if those funds are to be reallocated to another legal assistance provider. No legal assistance sector should have its funding reduced.

That said, we strongly recommend that the Commonwealth direct a greater proportion of *additional* Commonwealth funding delivered under future NLAP agreements to community legal centres. In our view, the 14% community legal centres receive at present does not represent a fair proportion of Commonwealth legal assistance funding for the centres in our membership network. Amplifying this unfairness is the reality that:

- state and territory funding for legal assistance flows almost entirely to LACs (which are state and territory government statutory bodies)
- most community legal centres are unable to pay comparable wages due to low levels of funding.

As a result, many legal assistance lawyers are moving from the community legal sector into LACs in pursuit of better pay and conditions. This further erodes centres' capacity to meet demand for services. Simply achieving the objective of pay parity across all legal assistance providers would require the proportion of Commonwealth funding allocated to LACs and community legal centres to change.

These factors create a particular obligation for the Commonwealth to ensure that community legal centres are appropriately resourced.

### **Funding allocations must support diversity in the legal assistance sector.**

Historically, law students and activists established community legal centres to respond to place-based injustices that were not being addressed by mainstream providers, particularly in civil and family law. In recent times, LACs have expanded their civil and family law service offerings, which, in some cases, has resulted in governments redirecting legal assistance funding from community legal centres to LACs. We support clients having choice when it comes to legal assistance, but redirection to LACs of funding upon which community legal centres rely can undermine the viability and sustainability of our sector and

can contribute to the collapse of individual centres. This jeopardises the diversity of the legal assistance service system, which is so critical to ensuring cultural safety and security for clients and managing legal conflicts. LAC services are critical and all legal assistance providers are reliant upon a national network of adequately funded and capable LACs. However, the community legal sector's unique model continues to deliver the best outcomes for some people and communities, and in some cases will be better placed than LACs to provide some services. This includes where:

- Community legal centres are well established and have been delivering effective services to communities for many decades
- Place-based services are clearly preferable and better able to deliver outcomes for communities, for example in RRRR and Aboriginal and Torres Strait Islander communities, or in the aftermath of extreme weather disasters
- Community-embeddedness is critical to service delivery
- Our unique service model is better placed to meet community needs, for example because we offer integrated services or services in partnership with other social services (such as through health justice partnerships)
- Associated law reform should be a priority, for example in relation to systemic access to justice issues, First Nations justice, domestic and family violence and workplace sexual harassment, anti-discrimination matters, employment and social security law, and financial rights and financial security
- People feel more comfortable accessing an independent rather than a government legal assistance provider.

As noted above, we recommend that the quantum of additional Commonwealth funding for community legal centres should be determined with reference to LACs. We do not support increasing funding for community legal centres at the expense of ATSILSs or FVPLSs.

**States and territories should retain lead responsibility for funding allocations, but the Commonwealth should take a greater role in directing these allocations.**

To protect against some of the poorer examples of state and territory government practice in the administration of community legal centre funding (discussed further below), we support the Commonwealth playing a greater role in directing the way that states and territories allocate funding. The Commonwealth may still choose to leave most decision-making to the states and territories, but this is not incompatible with expressing views where it has them. The next NLAP should enable – indeed encourage – the Commonwealth to issue clearer guidelines to states and territories on funding allocations, particularly in relation to funding allocated to deliver Commonwealth Government policy priorities and additional injections of funding over the life of the NLAP. These guidelines should specify:

- How funding is to be allocated between legal assistance providers
- The outcomes funding is to achieve
- Whether funding is to be allocated to specific community legal centres
- Timeframes for allocation, specifically dates by which legal assistance providers should have received their funding.

There is also support from community legal centres in some jurisdictions for the Commonwealth to direct states and territories to allocate funding to specified functions in NLAP, like collaborative service planning and data collection. There is strong sector support for the Commonwealth to direct state and territory governments to fund the establishment or expansion of community legal sector peaks in each jurisdiction. The Commonwealth

should monitor and report on compliance with any guidelines it issues under future agreements in a timely way.

### Recommendations

Under the next NLAP, the Commonwealth government should:

- Continue to determine the proportion of overall NLAP funds to be allocated to community legal centres, ATSILSs, FVPLSs, and LACs
- Ensure all legal assistance providers receive more funding than they receive at present
- Increase the proportion of additional funding it allocates to community legal centres from the current level of about 14%. ATSILSs and FVPLSs should not receive less to achieve this outcome
- Play a greater role in directing how states and territories allocate Commonwealth legal assistance funding, including by issuing clear guidelines about timeframes for funding allocations and the policy objectives and outcomes to be achieved. In this context, we support the Commonwealth directing states and territories to establish – or increase funding for – peaks in all jurisdictions
- Monitor and publicly report on states’ and territories’ compliance with any guidelines it issues to direct funding during the life of the agreement.

## State and territory government roles and responsibilities

Centres’ experiences of state government allocation processes and funding administration vary significantly across jurisdictions and between generalist and specialist centres. In this section, we highlight the many and varied ways that NLAP administration has not worked for community legal centres. However, we also recognise that centres in some jurisdictions have had much more positive experiences. We refer the Review to submissions made by state and territory peaks and individual centres for specific examples of state and territory government processes and practices that have delivered benefits for our sector under this NLAP. The next NLAP must do a better job of preventing poor jurisdictional performance and encouraging good performance, resulting in a more uniform experience for centres nationally.

### **State and territory governments’ performance of funding administration responsibilities has been varied.**

Some state governments have made significant contributions to community legal centre programs from state funds, but this has been extremely varied. Some state governments have also negotiated better indexation clauses for state-funded social services, including community legal centres, but again, results have been extremely varied.

Some state and territory governments themselves are under-resourced to properly do the work of strategically allocating legal assistance funding. Some impose contractual arrangements that hinder effective organisational planning and service delivery. We have cited elsewhere the example of the Tasmanian government’s practice of delivering contracted funding payments weekly in arrears. We have also cited the example of the



NSW government's tender and subsequent contracting process that resulted in a focus on high service targets, which forced some centres into prioritising high volume legal advices and one off assistance over more intensive, ongoing assistance. At the other end of the spectrum, the Victorian government allows community legal centres to set their own workplans, including targets, outputs, and outcomes.

### **States and territories should not delegate administration responsibilities to LACs.**

As noted in the previous section on effectiveness, LAC management of the community legal centre program can be inefficient, negatively impact collaborative service planning between LACs and community legal centres (by increasing competition between them) and create actual or perceived conflicts of interest.

### **Administration of special purpose funding has been problematic.**

Community legal centres nationally have been most concerned by the way in which governments have allocated and distributed additional injections of 'special purpose' Commonwealth funding for legal assistance services during the current NLAP. These processes have resulted in unfair or unintended distributions and significant delays in delivering funding to services to support communities impacted by unforeseen events.

The distribution of additional Commonwealth government funding for mental health services, women's legal assistance services, and implementing recommendations from the Respect@Work report, announced in the May 2021 federal budget, exposed the serious flaws in the bilateral agreements between the Commonwealth and states/territories for the allocation and distribution of this funding.

In the case of additional funding for women's legal assistance services, this was initially announced as being for women's legal centres. The Commonwealth government subsequently 'updated' guidelines for this funding, expanding the services eligible to apply for this funding from Women's Legal Centres to all centres and organisations offering women's legal assistance services. This caused significant confusion and distress. As noted above, in some jurisdictions the relevant Women's Legal Service/s got very little funding. In NSW, the two Women's Legal Centres had to submit tenders for funding, and compete with multiple legal assistance providers, but only after the state government had quarantined half of the state's total funding for its LAC.

Centres in the NT faced a significant wait to receive funding for mental health services announced in the same budget, due to limited grants administration capacity within the NT Department of Justice.

*In the Northern Territory, there is one grants manager. When additional mental health funding was provided by the Commonwealth to states and territories for allocation, the funding was held up for years because of the grants manager's lack of capacity to allocate. In the end, the funding allocation was not strategic or sophisticated.*

At the state level, government processes for distribution of Commonwealth disaster funding, including in some cases, competitive tenders, generated unacceptable delays in funding being allocated to desperate communities. Services in NSW and Qld impacted by

the February 2022 floods did not receive allocated disaster funding until June 2023. Centres in Western Australia impacted by the January 2023 Kimberley flooding did not receive funding to support their communities until September 2023.

Despite the poor experiences of some jurisdictions and centres, the consensus view across our sector is that state and territory governments remain best placed to administer legal assistance funding. However, under the next NLAP, there should be greater focus on addressing poor practice where it exists, achieving consistency and equity of experiences for community legal centres across jurisdictions, and improving transparency over funding decisions and allocations processes.

### Recommendations

In relation to state and territory government roles and responsibilities, the next NLAP should:

- Require states and territories to contribute funding to legal assistance providers, including community legal centres. The current NLAP does not compel states and territories to make any additional contribution to legal assistance funding. This results in considerable funding inequities across our sector, with providers in some jurisdictions receiving significant additional funding from their state or territory governments, while centres in other jurisdictions receive no additional funding at all. We note, of course, that the capacity of states and territories to contribute will vary
- Require states and territories to deliver funding security through five-year (minimum) funding contracts for all baseline funding grants. The adoption of a five-year partnership agreement in 2020 has not led to uniform funding security for community legal centres under the current NLAP. The next NLAP should require states and territories to deliver all Commonwealth baseline funding (with Family Law Family Violence funding being absorbed into baseline funding), and their own funding, via five-year service contracts
- Expressly prevent states and territories from delegating management of community legal sector programs to LACs. The administration of community legal sector programs by LACs – also legal assistance providers funded under NLAP – gives rise to a direct conflict of interest and undermines collaborative service planning
- Discourage states and territories from running open tender processes for community legal centre program funding and encourage, instead, co-design procurement processes. Community legal centres are the only legal assistance providers funded under NLAP that states and territories subject to open tender processes for NLAP funds. Open tenders generate division and undermine partnership and collaboration, which are integral to our movement's operation as an integrated network. These processes distract centres from service provision and, in our experience, have failed to deliver any discernible benefits for communities. Some tender processes have been extremely damaging for the sector and resulted in poorer services for communities in need
- Require states and territories to deliver greater transparency over funding allocation and distribution processes, improved reporting processes and greater accountability for outcomes
- Require states and territories to improve transparency around procurement processes for community legal centres and encourage them to partner with the community legal sector to co-design processes that foster collaborative service planning and delivery.

## Governments must provide greater transparency over funding decisions

Our sector supports greater transparency around governments' funding decisions and allocations, greater government accountability for outcomes, and a reduced reporting burden for community legal centres under the next NLAP. Currently, there is little to no transparency around how states and territories allocate Commonwealth funding to community legal centres.

To address this, the next NLAP should require states and territories to report annually to the Commonwealth on how they have allocated community legal centre funding, including:

- How much Commonwealth funding has been allocated versus how much state and territory government funding has been allocated
- Service type – generalist versus specialist
- Whether any centre has been allocated less funding than the previous year
- Amounts of Commonwealth funding they have allocated to administration of the Community Legal Centres Program, and how these funds have been expended.

The Commonwealth Government should release this information publicly, in a timely manner and in a way that enables state and territory comparisons.

### Recommendations

- The next NLAP should require states and territories to report annually to the Commonwealth on how they have allocated community legal centre funding
- The Commonwealth Government should release this information publicly, in a timely manner and in a way that enables state and territory comparisons.

## Funding models

### Distribution

We acknowledge that the Commonwealth has funding distribution models that seek to combine population and need, and make appropriate allowances for remote service delivery. We lack the expertise to make detailed recommendations on how to vary the current model to better target funding to expressed and latent unmet legal need. However, we do note the critical importance of the models accurately reflecting and adequately responding to need, and its different expressions across jurisdictions. Based on our sector's experience of funding distributions between jurisdictions under the current NLAP (and the previous National Partnership Agreement on Legal Assistance Services), the models do not deliver adequate or fair funding to some jurisdictions.

#### **Funding models should be adjusted to account for the costs of RRRR service delivery.**

Community legal centres in the NT and those that service communities in rural, regional, remote, and very remote (RRRR) areas more broadly, are disadvantaged in their efforts to respond to legal community need. There is ample evidence to show that deep and persistent disadvantage is concentrated within specific geographic communities across the nation.<sup>9</sup> Similarly RRRR communities and Aboriginal and Torres Strait Islander communities experience higher rates of disadvantage than the general population.<sup>10</sup>

In places like Katherine and Alice Springs in the Northern Territory, the Kimberley region in WA, and far-north Queensland, deep and persistent socio-economic disadvantage intersect with ongoing impacts of colonisation, intergenerational trauma, and poor access to education and employment in remote Aboriginal and Torres Strait Islander communities to drive high levels of complex social and legal need. Addressing these needs is time and resource intensive. Isolation, distance, and cultural factors increase the cost and complexity of service delivery to these communities.

For example, RRRR workers have reported experiences of spending six or more hours traveling to, carrying out, and traveling home from, a single client meeting, and spending \$100 000 on a single satellite phone. Despite this, the Northern Territory receives just 6% of Commonwealth legal assistance funding under the current NLAP, and community legal centres in the jurisdiction receive very little additional funding from the territory government.

To address this inequity, we recommend, at minimum, that the funding distribution models be adjusted to give greater weighting to legal need and to better reflect the true cost and complexity of delivering services to RRRR communities, particularly Aboriginal and Torres Strait Islander communities. As noted elsewhere in this submission, we also strongly support the transition to outcomes-based measurement and reporting for legal assistance providers. The outcomes model adopted should reflect the work already undertaken by legal assistance providers in some jurisdictions, and define outcomes broadly, to include not just the successful resolution of an immediate legal problem, but improved wellbeing

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<sup>9</sup> Vinson, T., Rawsthorne, R., Beavis, A., and Ericson, M. (2015). Dropping off the edge – persistent disadvantage in Australia: <https://apo.org.au/node/56085>

<sup>10</sup> Ibid.

across a range of metrics, including economic security, personal safety, and mental health (for example).

**Baseline funding should be significantly increased. Reliance on ad-hoc top-ups should be reduced.**

The current model provides inadequate baseline funding to community legal centres, with piecemeal, one-off funding injections as top-ups. This approach exacerbates funding insecurity, hampers centres' ability to respond to community needs in a flexible and timely way, and fosters competition, division, and fragmentation amongst providers.

Legal assistance work in many areas – such as work with women experiencing domestic and family violence or sexual harassment in the workplace, supporting people with mental ill-health, and extreme weather disaster preparedness and resilience work – aligns with stated Commonwealth Government priorities and has become business-as-usual for community legal centres. The need for these services will not decrease and will likely increase into the future.

At minimum, all additional Commonwealth funding announced in the May 2021 Federal budget should be included in baseline funding under the next NLAP. Similarly, additional funding delivered to legal assistance providers via bilateral agreements to respond to the Covid pandemic and extreme weather disasters, should be rolled into baseline funding under the next NLAP. Family Law Family Violence (FLFV) funding should also be rolled into baseline – almost all community legal centres do FLFV work, and centres that receive FLFV funding are invariably allocating more resources to this work received under this stream. There is no need for a separate stream to ensure this work is done.

### Recommendations

At minimum, the Commonwealth's funding distribution models should be adjusted to:

- Take account of available quantitative and qualitative data to target funding to existing, unmet, and complex legal need
- Reflect the true cost and complexity of delivering services to RRRR communities, particularly Aboriginal and Torres Strait Islander communities
- Significantly increase baseline funding allocations and reduce reliance on ad-hoc, one-off investments in legal assistance services during the life of the next NLAP.

### Quantum

As the Issues Paper sets out, the Commonwealth's funding distribution models only operate to allocate an arbitrarily pre-determined quantum of Commonwealth funds between jurisdictions. The proportion of funding allocated to community legal centres, ATSILSs, and LACs is also arbitrarily pre-determined.

## **Governments must invest significant additional funds into the legal assistance sector.**

As noted above, the quantum of funds available to legal assistance providers is woefully inadequate to meeting expressed and latent legal need in the community.

### **We strongly recommend**

- An immediate injection of new funding into the legal assistance sector via the May 2024 federal budget to support service delivery until the current NLAP expires in June 2025. This injection should be of such a scale as to adequately account for legal need, inflation, rising wages, the mandatory superannuation guarantee, and data and reporting work
- A significant increase in total Commonwealth funding for legal assistance services under the next NLAP – the specific amount should be determined taking into account the Law Council of Australia’s 2018 recommendation that all governments should invest an additional \$390 million to legal assistance services
- At least double the current level of Commonwealth funding for community legal centres service in the new NLAP (based on all legal assistance funding currently in the community legal centre service system)
- An increase in the proportion of additional Commonwealth legal assistance funding allocated to community legal centres under the next NLAP (noting that any increase for community legal centres should not come at the expense of ATSILSs or FVPLSs).

Almost a decade ago in 2014, the Productivity Commission recommended an immediate injection of \$200 million into the legal assistance sector to meet legal need, with the Commonwealth contributing 60% and states and territories contributing 40%.<sup>11</sup> In 2018, the Law Council of Australia revised this figure upward to \$390 million per annum, to be invested by all governments.<sup>12</sup> If the Commonwealth Government is committed to meeting all legal need in the community, it is likely that these figures are now an underestimation of the quantum required to meet need and would need to be revised upward again.

Community Legal Centres Australia also recommends that community legal centres receive a greater proportion of overall Commonwealth legal assistance funding (currently we receive 14%). As noted in our recommendations above, however, this assumes an increase in funding overall as we do not advocate any provider getting less so we can get more. Also as noted above, this reassessment should be determined with reference to LAC funding and should not come at the expense of ATSILSs or FVPLSs (should they continue to be funded under a single legal assistance partnership agreement). Commonwealth contributions to ATSILSs and FVPLSs should also increase significantly, in line with such

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<sup>11</sup> Productivity Commission (2014). Access to justice arrangements – Inquiry report: <https://www.pc.gov.au/inquiries/completed/access-justice/report>

<sup>12</sup> Law Council of Australia (2018). The Justice Project – Final report: <https://lawcouncil.au/justice-project/final-report>

recommendations we presume NATSILS and the National FVPLSs Forum have made to the Review.

Our sector has enormous regard for LACs and our centres rely on the critical services delivered daily by LACs across this country. We support LACs receiving significantly more funding. But we do not feel that 14% of additional Commonwealth funding would be a fair allocation to our sector or the best outcomes for communities in need.

**Additional funding should flow directly to legal assistance providers, not private lawyers.**

Private practitioners make an important contribution to legal assistance. They do this in multiple ways, including through pro bono contributions by many practitioners to many community legal centres. They also deliver services on grants of legal aid. Increasing grants of aid to private practitioners to do Legal Aid work is not the only effective response to market failure (for example, in RRRR communities). Instead, a more effective solution might be to allocate a portion of these funds to community-based legal services that would, arguably, provide better services, more cheaply. While private lawyers do have compliance regimes they must follow, our sector has a deep commitment to quality assurance and continuous improvement through our National Accreditation Scheme. The scheme requires any centre that wants to become and remain a member of their state or territory community legal sector peak body to participate in a rigorous assessment process every three to four years. Accreditation is a statement of service quality and a critically important means by which we protect the community legal centre brand: if a centre is accredited, clients, communities, funders, and other stakeholders can be confident it has been through a rigorous assessment process and deemed by qualified assessors to meet – or be working towards – key performance standards. Community legal centres are also skilled at delivering trauma-informed and integrated services, which are designed to meet people’s needs safely and holistically.

**The community legal sector needs at least double the funding currently in our service system to meet need effectively.**

Given the lack of current, consistent national data on legal need, it is impossible to truly know its scale. The lack of transparency as to how states and territories have allocated additional Commonwealth funding for legal assistance since 2020, means we do not even know how much money is currently in the community legal centre service system nationally. It is deeply problematic that the Commonwealth does not have this information.

Given we do not have an accurate assessment of contemporary legal need and cannot say how much funding community legal centres currently receive, it has been difficult for us to determine a specific funding quantum that would enable community legal centres to meet legal need. However, we estimate that our sector needs *at least* double the total amount of Commonwealth funding currently in the community legal centre service system. This includes:

- Baseline and FLFV funding included in NLAP
- All additional Commonwealth funding for legal assistance services announced in the May 2021 Federal Budget and allocated to community legal centres
- All Commonwealth funding for Covid response
- All Commonwealth funding for disaster response and recovery

- All Commonwealth funding for pilot projects, such as the Migrant Women’s Pilot Project. Further, all successfully evaluated pilot projects should be converted to permanent programs and expanded.

**The Commonwealth should adopt a principles-based approach to determining the exact funding quantum for the community legal sector.**

To help the Commonwealth determine the precise quantum of funding the community legal sector needs, we have developed high-level principles to guide future funding allocations to community legal centres. In addition to these principles, we have identified – and attempted to cost – a series of considerations the government must factor into its decision-making about the appropriate level of funding for the community legal sector under the next NLAP.

At a high level, we recommend the Commonwealth apply the following principles to determining funding quantum for community legal centres.

- The Commonwealth bears a particular responsibility for ensuring community legal centres are adequately funded (given that most state government contributions to legal assistance funding flow to LACs). The proportion of new Commonwealth legal assistance funding that flows to community legal centres should increase from its current level of 14%. A proportional increase in funding to community legal centres should not come at the expense of ATSILSs or FVPLSs
- Additional funding must be delivered. At a minimum, all Commonwealth funding currently in the community legal sector service system should be rolled into baseline funding under the next NLAP. This includes all new funding delivered to community legal centres via the 2021 federal budget, all disaster and Covid response funding, and all pilot program funding
- Generally, no centre should receive less than its current funding. There may be some exceptions. States and territories should have some flexibility in relation to funding allocations to community legal centres: there may be some circumstances where centre under-performance or a reassessment of legal need might justify reduced funding to a centre. But states and territories should have to engage with the Commonwealth and with the state and territory community legal sector peak if they plan to conduct tenders or other reallocation processes that may result in some centres receiving reduced funding allocations
- Funding arrangements should give centres maximum flexibility to apply new and additional funding according to unique community needs and service models and limit additional reporting burdens
- Funding allocations should clearly adhere to the principles set out in NLAP, and governments should report on how they allocate funds annually to improve transparency.

**Funding for community legal centres should account for the full range of functions required to meet need effectively.**

Determining the sufficient funding quantum for community legal centres under the next NLAP should also be based on consideration of the following factors:

- Evidence-based assessments of legal need, including qualitative data from legal assistance clients about the outcomes they want and that legal assistance services have delivered for them



- An assessment of the full range of functions centres require to meet legal need effectively, and the true cost of supporting these functions for independent, community-based services
- Better recognition of and recompense for the cost of meeting people's legal needs in RRRR communities
- Increased sector capacity to respond to disasters, including building organisational and community resilience as well as response and recovery work, which (regrettably) are now a regular part of our workload
- Additional funding targeted to priority legal needs in line with Commonwealth Government priorities
- Additional funding for the strategic and responsive law reform and advocacy that community legal centres have been doing, largely unfunded, for 50 years
- Additional funding to deliver pay parity across the legal assistance sector so that people receive equal pay for equal work, whether they are employed by a community legal centre, an ATSILS, a FVPLS, or a LAC
- Funding to support innovation, including sector-led mergers and new centres, as well as early intervention and wrap-around services
- Adequate indexation to ensure centres can keep pace with inflation and the rising cost of wages and superannuation entitlements
- Additional funding for community legal sector peaks nationally and in every state and territory to support community legal services to deliver safe, effective services, and undertake advocacy.

The remainder of this section considers each of these factors in greater detail.

### Embracing needs-based approaches to funding

Community legal centres are in the business of meeting people's needs holistically. Our aim is to do more than address discrete and pressing legal problems. Rather, we work to support people and communities to overcome individual and systemic barriers to accessing justice, and to set the foundations they need to achieve improved wellbeing, safety, and economic security.

#### **Funding allocations must prioritise meeting people's need holistically.**

As such, it is critically important governments consider assessments of legal need in tandem with funding quantum. Determining the funding required to meet legal need requires consideration of:

- The nature and extent of legal need in the community, including unmet and latent legal need
- A clear and shared articulation of the outcomes to be achieved through legal assistance funding and a framework by which to measure achievements against these outcomes
- A realistic appraisal of the full suite of functions organisations require to deliver effective services to meet identified needs.

As noted above, over the past decade, a growing number of inquiries and reports have found that there is extensive and increasing unmet legal need in the community, that governments must urgently invest in legal assistance services to meet this need, and that doing so will deliver significant savings to governments and communities in avoided downstream costs.

Data collected annually by Community Legal Centres Australia on the number of people community legal centres turn away each year due to resource constraints supports these findings. Data for 2022 – 23 shows that demand for services increased for 92.7% of centres surveyed, compared with the previous 12 months. No centres said their demand decreased. Meanwhile, centres are absorbing increased operational costs without adequate indexation. Centres have been forced to make ends meet, in most cases by reducing staff or reducing services (or both).

On average, centres reported 23.8 turnaways per week, or 1237 turnaways per year per centre. Across all centres in Community Legal Centres Australia’s membership networks this equates to almost 200 000 per year. This is as many people as we service annually, and turnaways are but a small proportion of those in the community with unmet legal needs. Our turnaways data does not include people who don’t know their problems are legal, who don’t know who to contact for assistance, who can’t get an appointment before their court date or can’t stay in a phone queue long enough to get advice.

**Funding allocations must reflect outcomes achieved for people not outputs delivered by services.**

Addressing legal need, also requires a greater focus on outcomes and investment in service delivery models that are proven to meet them. Community legal centres’ experience during the current NLAP has been that the continued focus on measuring service effectiveness based on outputs rather than outcomes has driven them to prioritise high volume-low impact services (like one-off information and legal advice) over high intensity-high impact services (like legal casework and representation) to meet their contractual obligations. This is particularly true for centres in jurisdictions like NSW, where competitive tender processes have resulted in service contracts locking centres into extremely high service output targets that make meeting people’s needs holistically through intensive casework extremely difficult.

Consultation quote:

*“Funders love advice because it gives big numbers to report. If they want us to help people genuinely disadvantaged rather than the missing middle, then they need to fund more substantive services that don’t generate big numbers in reporting. Advice is very helpful for the missing middle. People who are literate and don’t face many barriers, advice can help move the outcome. For people in greater need they need more intensive service otherwise it’s a waste of time.”*

Service data from CLASS cited in the previous section on legal needs shows that the proportion of one-off services centres deliver has increased over the past 5 years, while the proportion of ongoing services has decreased. National and state and territory peaks, and individual centres, also conduct more detailed analyses of turnaway data, which factor in clients they have been able to offer a limited service to, but whose needs they have not been able to fully address through intensive legal casework and wraparound services. Data from Caxton Legal Service is also cited in the previous section on legal need.

Feedback from clients, anecdotally reported by centres and provided directly via qualitative responses to client feedback surveys centres are required to conduct under NLAP, shows that services better meet clients' needs when they invest adequate time and resources in delivering intensive supports.

For example, a report release by Consumer Action Law Centre in August 2023 presented qualitative data collected from people who accessed their casework service, as well as their consumer advice service during service evaluations conducted in 2019 and 2021.<sup>13</sup> The former is an intensive service, which provides ongoing legal assistance until a person's matter is resolved. The latter is a less intensive, self-help style service that offers advice to assist people to resolve problems on their own. For evaluation participants, support from the casework services was life-changing:

*"In terms of changing, it changed my life totally. Like I said before, before the lawyers got involved in my case, I was in a terrible situation. I was in a place where I saw no future. I had a sense of hopelessness. But after the lawyers helped me, I could see there is a future; I could look forward to the future."*

For some clients, the less intensive consumer advice service also supported some people to resolve their credit and debt problems. However, others were not able to resolve their problems on their own and simply gave up:

*"I told the company that I would pursue VCAT but they were sending me blackmail back. After than I just had other things to do so I dropped it..."<sup>14</sup>*

As such, legal needs assessments should consider not just the people centres send away entirely, but also those to whom we can only provide minimal services rather than the higher levels of support they need to address their needs holistically. By extension, efforts to quantify the additional funding community legal centres require to meet legal need must include an assessment of the true cost of implementing outcomes-based funding, including providing sufficient resources to community legal centres to increase capacity to deliver comprehensive and intensive legal casework and representation.

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<sup>13</sup> Consumer Action Law Centre (2023). Addressing and preventing legal need relating to credit, debt, and consumer law issues: <https://consumeraction.org.au/analysis-addressing-and-preventing-legal-need/>

## Recommendations

Commonwealth, state, and territory governments should:

- Consider assessments of legal need in tandem with funding quantum.
- When determining the funding required to meet legal need, consider the following factors:
  - The nature and extent of legal need in the community, including expressed and latent legal need
  - The outcomes to be achieved through legal assistance funding and a framework by which to measure achievements against these outcomes
  - The full suite of functions organisations require to deliver effective services to meet identified needs.

## Supporting effective, sustainable services to meet identified needs

### **Community legal centres must be properly funded to deliver effective services and meet identified needs.**

Determining the total funding our sector requires to meet legal need in the community requires a realistic appraisal of the full range of functions centres need to deliver effective, outcomes-focused services. Community Legal Centres NSW (CLCNSW) has developed a model for a sustainable community legal centre, which sets out a list of elements of a resilient organisation. These include adequate wages (on par with LACs/government agencies), learning and development pathways for staff, cultural safety, safety and wellbeing, corporate services and IT, data and reporting, robust governance structures, wrap around services, advocacy and communications, and volunteer programs. CLCNSW has used this framework to estimate the real cost of delivering effective services for small, medium, and larger community legal centres.

We refer the Review to the CLCNSW submission for further details.

### **Funding allocations must be appropriately indexed.**

Finally, the next NLAP must include an adequate indexation clause to ensure that community legal centres don't face funding cuts in real terms year on year. The current NLAP includes a provision for annual indexation of 1.5% per annum on Commonwealth legal assistance funding. This is well below the current rate of inflation, which is driving up the costs of service delivery. At the same time, centres must also fund (welcome and appropriate) wages increases set by the Fair Work Commission (in June 2023 the Commission awarded SCHADS workers a 5.75% pay increase<sup>14</sup> and legislated increases to minimum mandatory employer superannuation contributions, which on 1 July 2023 rose to

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<sup>14</sup> Fair Work Commission (2023). Annual wage decision 2022-23: <https://www.fairwork.gov.au/newsroom/news/awr-2023>

11%. Disappointingly, community legal centres funded under NLAP have been excluded from the current Commonwealth Government's efforts to support not-for-profit social and community services meet the challenges presented by the current inflationary environment. This includes the \$560 million funding pool for housing, Aboriginal and Torres Strait Islander, and community services established in the October 2022 federal budget and the changes to the calculation used to determine annual indexation for funded services in the May 2023 federal budget, which is expected to deliver \$4 billion to government and community services supporting people who experience disadvantage.

The 2023 State of the Sector Survey asked participants to identify their three main challenges in 2022-23. Insufficient funding and the impacts of inadequate indexation and rising inflation was the top challenge for centres.

Forty-one centres provided feedback to an open-ended question on the impacts of inadequate indexation on their service delivery. Sixteen of these centres directly mentioned that they had to reduce their services because of budget constraints caused by poor indexation. Fifteen directly mentioned having to reduce staff numbers or hours. Some centres reported abandoning important partnerships. Several centres came up with alternative unsustainable solutions, for example, reallocating other funding, operating on a deficit budget, or utilising growth in interest returns.

*"Our wages bill has increased markedly since COVID and yet there is no recognition we must meet the same targets with higher wages and therefore less FTEs."*

*"With wage rises, increased superannuation, lack of indexation and less carried forward, [our centre] faced an \$800k deficit budget for FY 2023-24. Staff cuts and reduced hours (mainly voluntary) were implemented and a \$200k+ deficit budget eventually approved by the Board. It will continue to be a difficult year financially."*

*"We have had to cancel particular outreach clinics, and CLE [community legal education] sessions, and the amount of case work we take on."*

*"Whilst we have not reduced hours of service delivery, yet we have reduced funds for professional development, training, attending conferences, promotion, equipment."*

These challenges have a flow-on effect to our centres' relationships with community:

*"We are seeing growing frustration at services not keeping up with needs of the community, leading to greater stress and potential burnout amongst staff."*

RRRR centres were especially impacted by the combination of rising cost of living pressures and inadequate indexation. Increasing costs of travel caused by inflation, combined with the issues mentioned above, led to several RRRR centres being forced to reduce their outreach services, resulting in many clients in particularly vulnerable situations being unable to access support.

The Victorian community legal sector has just achieved an indexation win with the state government, through an agreement negotiated by the Victorian Council of Social Service and the Australian Services Union. Victorian community legal centres are now being included in the group of community sector organisations that will have their state government incomes indexed. The formula to be used is that indexation will be calculated at 80% national wage increases and 20% CPI increases. Community legal centres in Western Australia have also been included in an indexation agreement negotiated between the Western Australian Council of Social Service and the state Department of Social Services, which uses the same formula to index annual community service organisations income from state governments.

Feedback from Community Legal WA suggests that the model has not served the community sector in WA well. This year, the model only delivered an indexation rate of 4.11% to community organisations. It has taken considerable further advocacy to achieve a recent increase to 4.51% to account for the mandatory superannuation guarantee. This rate, though better, is still lower than many other jurisdictions (for example, from 1 July 2023, the NSW Departments of Communities and Justice and Health will index grant payments to non-government organisations at 5.75%).<sup>15</sup> The model also fails to account for the higher costs of delivering services in RRRR communities, including much higher CPI and wage costs. The WA government has accepted the current indexation model is not fit for purpose and is working with the WA community sector to develop a more appropriate model. Unfortunately, this work will not be completed in time for the NLAP review.

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<sup>15</sup> NSW Government (2023). Funding certainty for vulnerable groups in the community, 30 June 2023: <https://www.nsw.gov.au/media-releases/funding-certainty-for-vulnerable-groups-in-community#:~:text=lt%20indexes%20grant%20payments%20to,NSW%20Budget%20on%2019%20September>

## Recommendations

- The next NLAP must provide a higher rate of indexation on all Commonwealth funding (baseline and additional injections), based on a formula that appropriately accounts for wage increases, CPI increases, and the much higher wage and CPI costs faced by services in RRRR communities
- The Commonwealth should examine the findings and recommendations from the review of the WA indexation model for community services and consider new models that emerge
- The Commonwealth should encourage all state and territory governments to work towards similar agreements on indexation of state and territory social services and legal assistance funding, where these don't already exist.

## Meeting legal needs in RRRR communities

Community legal centres that deliver services to regional, rural, remote, and very remote communities (RRRR centres) face a unique set of challenges meeting legal needs. These centres are as diverse as the communities they support. Centres operating in very remote parts of the country, or that support Aboriginal and Torres Strait Islander communities, have very different needs from those operating closer to major urban centres, or those that service both urban and regional communities (via outreach or specialist statewide services). Specialist community legal centres, which offer statewide services, are often physically based in urban areas, but can deliver a significant number of services to RRRR communities remotely and via outreach. They also offering training and capacity building to local, generalist centres to identify and respond to specialised legal problems. Meeting these diverse needs requires a flexible, principles- and needs-based approach.

The experience of RRRR centres under the current NLAP is that funding distribution models (and quantum) do not adequately reflect or prioritise the depth and complexity of legal needs in RRRR communities, or the true costs of delivering impactful services to them. This is particularly true for centres working with remote and very remote Aboriginal and Torres Strait Islander communities (for example in the NT, far-north Qld, remote WA and SA, and far-west NSW), which although small, experience disproportionately high levels of disadvantage, and trauma, compounded by geographic isolation, and extremely limited access to education, employment, and health and social services. This leads to significant access to justice inequities between centres in urban and RRRR locations, and between jurisdictions with large, highly urbanised populations, and those with lower overall population numbers but a high proportion of people, including Aboriginal and Torres Strait Islander people living in remote and very remote communities.

### **Digital services cannot replace face-to-face engagement in RRRR communities.**

Digital services play an important role in service delivery to RRRR communities but cannot replace place-based, face-to-face services. Many people in RRRR areas have limited

access to the internet or to devices like laptops, and many may also have limited digital literacy. Even for those with access to the internet and devices, digital service delivery is often only an option after face-to-face trust has been built up. It can be difficult to fully understand the breadth of a person's legal and other needs without meeting with them face-to-face and building a level of trust that is only attainable in-person.

The shift to online and remote service delivery (for example court applications and services) creates further barriers to justice for people and communities in RRRR areas who already experience higher levels of exclusion from the legal system. While digital service delivery should be supported where appropriate, funding models must not assume face-to-face service delivery can be replaced by digital services, especially for people in RRRR areas.

### **The cost of delivering services in RRRR areas are particularly high.**

There is a range of unique costs associated with operating in RRRR areas. This includes service infrastructure like phones, vehicles, and fuel, as well as the time it takes for community legal centre workers to travel to different parts of the centre's catchment area, and the time it can take to build relationships and trust in RRRR areas. Some centres report that vehicle and fuel costs alone add \$100,000 per year to core running costs.

### **RRRR centres face unique workforce challenges.**

Many RRRR centres struggle to attract and retain qualified staff. The cost-of-living and rental crises contribute to this – rental housing is limited, and centres' lack of resourcing to pay sufficient wages means workers struggle to find a place to live. Creative housing solutions, such as making housing for government employees available to workers from the legal assistance sector, could help mitigate this problem. Childcare is often a struggle for RRRR workers. For example, a Northern Territory RRRR centre worker has recently had to work remotely from Melbourne for several weeks because of a lack of available childcare in the NT.

### **Community engagement, legal education, and relationship-building in RRRR areas.**

Community engagement work and CLE are critical in building trust with RRRR communities. Early intervention is vital, but many people in RRRR areas do not know of the services available to them – especially where the service's physical office may be many hours away. Services that support RRRR communities need significantly more resources for both traveling to different parts of their catchment areas, and for advertising and communicating across large areas. RRRR centres that support remote Aboriginal communities may need multi-lingual radio and video campaigns to properly reach people.

Inter-organisational partnerships are also particularly valuable to RRRR centres. Building strong relationships with other organisations can support delivery of physically and culturally safe wraparound services in contexts where few organisations have the resources to deliver integrated services in-house. However, developing and maintaining strong relationships is time- and resource-intensive.

### **Funding models should be adjusted to better target resources to RRRR communities.**

To address the inequities experienced by RRRR communities, and properly resource RRRR centres to respond holistically to people's needs, Community Legal Centres Australia supports adjusting funding distribution models to:

- Give greater weighting to legal needs components (as compared to population components) particularly in jurisdictions where a high proportion of the population



identifies as Aboriginal or Torres Strait Islander, or lives in remote or very remote locations

- Provide appropriate loading to centres servicing RRRR communities, including statewide specialist services, that accurately reflects the true cost of delivering services to these communities, including for infrastructure (vehicles, satellite phones, and other communications infrastructure), travel expenses (fuel, flights, and accommodation), face-to-face service delivery (including via outreach), and critical community engagement work
- Provide appropriate incentives to attract graduates and more qualified professionals to work in RRRR communities, including adequate remuneration loadings for remoteness, housing and childcare costs, HECS debt waivers for graduates who spend a minimum period working in RRRR centres (we suggest at least five years is appropriate), and incentives to keep local people in their communities. These are discussed further in the workforce section below.

Outside of NLAP, all levels of governments must commit to ongoing and increased investment in social and justice infrastructure in RRRR communities, so that people living in these communities retain face-to-face access to courts and legal assistance services, and people attracted to working in these communities can access appropriate housing, education, health, and other services (like childcare).

We refer the Review to submissions and recommendations made by the National Rural, Regional, Remote and Very Remote Community Legal Assistance Network.

### Meeting people's needs before, during, and after disasters

We refer the Review to the joint submission by Community Legal Centres Australia, National Legal Aid, and NATSILS on the appropriate funding distribution model and quantum for disaster legal assistance services. We acknowledge the work of Disaster Legal Help Victoria for its work to coordinate this submission, which we support. In line with the joint submission, we support:

- The provision of additional funding for place-based legal assistance providers to engage in community and organisational resilience building and prevention work as part of baseline NLAP allocations
- The provision of timely and adequate surge capacity funding via the off-the-shelf package being developed by the Commonwealth Attorney General's Department. This funding should be sufficient for centres to meet additional demand for services during response and recovery phases (noting that legal issues often emerge well after an extreme weather event and can have a long tail), as well as business-as-usual, so that redirection of resources to respond to disasters doesn't create gaps in other service areas (like family law and domestic violence) or create additional pressures for surrounding services
- A mixed model of disaster legal assistance service delivery, which is coordinated by place-based services and assisted by statewide specialist services (for example, insurance, tenancy, and social security legal services).

### **Provide baseline NLAP funding for disaster preparedness and resilience-building.**

Community legal services are a critical part of disaster legal assistance service infrastructure across all jurisdictions. Both place-based generalist, and specialist centres contribute to extreme weather disaster preparedness, response, and recovery efforts,

through community legal education, law reform and advocacy, training and capacity building, and direct service delivery through recovery centres, outreach, and business-as-usual service delivery long after the crisis response is over.

Climate change is driving ever more frequent and intense extreme weather events. Data show clearly that people experiencing poverty, disadvantage, discrimination, and social and geographic isolation are first and worst affected. Governments at all levels must prioritise supporting people, organisations, and communities to prepare for more and more intense events. This includes drastically increasing the quantum of disaster funding available, including to legal assistance services, for prevention and resilience-building.

We already know the places most at risk. Centres in these places should have funding baked into their core business for prevention and preparedness work. We also know that disaster preparedness, and response and recovery, efforts work best when they are grounded in strong relationships and effective partnerships between stakeholders and effectively coordinated by place-based services.

As such, it is critically important that baseline funding for legal assistance services is increased to support:

- Regular and ongoing stakeholder engagement (including with all levels of government, not-for-profit disaster response agencies, local organisations, and individual community members) to plan for future events
- Business continuity planning and organisational resilience-building, to ensure that community legal centres are prepared for future events, are well-placed to limit disruptions to service delivery, and have the capacity and resources to quickly scale up service delivery to meet need after a disaster
- Maintenance of some level of specialist legal expertise, particularly in disaster-prone areas. It doesn't make sense to step up and down specialist staff each time there is a disaster
- Community legal education, to build people and communities' understanding of the common legal issues that can arise during and after disasters
- Strategic advocacy and law reform work, to ensure governments are taking effective action to mitigate the impacts of climate change and to ensure that adaptation measures include and address the unique needs of people experiencing poverty, disadvantage, and discrimination.

### **Deliver timely, flexible funding for surge capacity during and after disasters.**

When it comes to funding effective disaster response and recovery work, delivering resources to legal assistance services months or years after an event is simply not good enough. Disaster response and recovery funding should be allocated via the off-the-shelf (OTS) package the Commonwealth Attorney General's Department is currently developing in consultation with legal assistance providers nationally. Disaster response and recovery funding should:

- Be delivered in a way that gives centres maximum flexibility to respond quickly to changing and emerging community needs and avoids onerous, additional reporting requirements
- Recognise that disasters have a long tail, with legal issues and needs often emerging one- two- or five years down the track
- Ensure that centres, or groups of centres, have sufficient surge capacity to meet disaster-related legal needs as well as demand for business-as-usual services so

that centres aren't faced with a significant increase in demand for regular services in the aftermath of an event. In this context, centres in disaster-prone areas should receive surge capacity funding, as well as nearby centres so they can take up the overflow of business-as-usual matters. This would go some way to addressing the fact that while there may currently be capacity across the broader legal assistance sector to assist with surge capacity, there is no requirement for services to assist, and little incentive or appetite to do so

- Recognise and account for the different contributions specialist statewide services and place-based generalist services make to disaster response and recovery, and support these centres to work together effectively to meet need
- Recognise and account for the work involved in coordinating the contributions of different legal assistance stakeholders throughout disaster response and recovery, particularly for smaller, local centres (and building and maintaining these relationships both during specific events and between one event and the next)

### Recommendations

The Commonwealth government should:

- Deliver additional resources for legal assistance services, including place-based, generalist and specialist community legal centres, to engage in community and organisational resilience building and prevention work via baseline NLAP allocations
- Provide adequate and timely surge capacity funding for specialist and generalist community legal centres that contribute to disaster response and recovery efforts via the off-the-shelf disaster legal assistance funding package currently being developed by the Commonwealth Attorney General's Department. This funding should be sufficient for centres to meet:
  - Additional demand for services during response and recovery phases (noting that legal issues often emerge well after an extreme weather event and can have a long tail)
  - Demand for business-as-usual services, so that redirection of resources to respond to disasters doesn't create gaps in other service areas (like family law and domestic violence) or create additional pressures for surrounding services.

State and territory governments should:

- Partner with legal assistance providers, including community legal centres, to develop jurisdiction-specific disaster legal assistance response models, which adopt a mixed model of service delivery, recognises the unique contributions of specialist and generalist legal assistance services, and supports local response coordination as far as is possible.

## Achieving outcomes to support Commonwealth Government priorities and reforms

As noted above, in our view the Commonwealth Government should be entitled – and encouraged – to outline priority areas of need to be addressed through additional legal assistance funding and to require states and territories to direct NLAP funding to specific legal assistance sub-sectors, services, and centres to support these priorities.

All funding currently in the community legal sector is already being applied to priority legal need. So, in a fixed funding environment, it would not be appropriate for the Commonwealth to seek reallocation of funding from one priority to another. Filling a gap in one place by creating a gap elsewhere does nothing to address overall legal need. With *additional* funding, however, we do think it reasonable for the Commonwealth to indicate priority areas for its application. Directing funding in this way recognises the significant additional work that government policy decisions and legislative changes generate for centres, including through increased demand for existing services (including law reform and policy advice) and the establishment of new services.

Recent and current Commonwealth Government priorities that have generated – and will continue to generate – significant additional demand for community legal centre services, (including law reform and advocacy work) and which should be accompanied by additional funding include:

- The National Partnership Agreement on Closing the Gap and Closing the Gap justice targets
- The National Plan to End Violence Against Women and their Children, and associated plans to end violence against Aboriginal and Torres Strait Islander women and children
- Proposals to address the backlog of claims sitting at the Administrative Appeals Tribunal and to build a replacement authority for the AAT
- Reforms to:
  - Laws regulating consumer credit products arising from the Banking Royal Commission
  - Social security laws and practices recommended by the Robodebt Royal Commission
  - Commonwealth and state anti-discrimination laws and human rights frameworks, and state and territory criminal laws and justice systems, recommended by the Disability Royal Commission.
- Extreme weather resilience, response, and recovery.

Other regulatory decisions and legislative reforms made by governments can also generate additional work and costs for legal assistance providers. For example, the Commonwealth commenced a review of the *Privacy Act 1988* Review in 2020, which is now nearing completion. Initial amendments were made to the Act in December 2022 and further amendments will be made during 2024. The Commonwealth Attorney-General is also consulting on more substantial amendments which are likely to be implemented within the next 2-3 years and will have a significant impact on community legal centres and other small not-for-profit organisations in the legal assistance sector. Compliance and administrative costs will increase to ensure organisations comply with the reforms. Solicitors working in the legal assistance sector will also need training to be able to advise their clients on the reforms and the potential new direct rights of action that are likely to be introduced.

### Recommendation

When amending laws or making major policy decisions, Commonwealth, state, and territory governments should:

- Closely consider potential impacts to people's ability to access justice (including the advice of legal assistance providers) and the community legal sector's capacity to absorb additional administrative burdens and operational costs
- Allocate adequate funding to meet additional legal needs, administrative burdens and operational costs generated.

### Addressing needs systemically through law reform and advocacy

The community legal sector's work to advocate changes to unjust and harmful laws is unique. This work improves the lives of the people and communities we serve, makes our systems and institutions better and more accessible for everyone, and reduces demand for legal assistance services. Properly funded law reform and advocacy address systemic injustices and reduce legal need. They represent the most efficient use of limited resources.

However, as funding has remained static, or indeed gone backwards for many centres, advocacy work is often the first thing centres drop – even where it is written into workers' role descriptions – as centres prioritise service delivery and meeting immediate legal needs. Further, until very recently, the NLAP clause setting out the types of law reform work centres could use Commonwealth funding to undertake had a chilling effect on centres' advocacy, particularly strategic advocacy to highlight and challenge unfair laws and government policies. The threat of punishment for undertaking any work that could be perceived as outside the scope of the clause discouraged centres from doing critical advocacy and law reform work.

For a variety of reasons, including that it is largely unfunded, few centres are required to report to government on advocacy and law reform, and that, until recently, it was actively discouraged by past Commonwealth governments, costing the sector's advocacy work is an inherently difficult task.

The 2022-23 State of the Sector Survey asked respondents to identify the proportion of their work that advocacy currently represents:

- 71% said that advocacy makes up less than 10% of their work
- 22% said advocacy makes up 10-25% of their work
- 6% said advocacy represents 25-50% of their work.

Centres were then asked how much of their work they would like to be devoting to advocacy and law reform.

- 12% wanted advocacy to make up less than 10% of their work
- 59% wanted advocacy to make up 10-25% of their work
- 25% wanted advocacy to make up 25-50% of their work

- One wanted advocacy to make up 80% of their work.

Overall, there is strong desire amongst community legal centres to increase advocacy work. Given our sector's strong record in advocacy and law reform to address systemic injustice over many decades, this is not a surprising result.

Nine centres that responded to the survey reported employing staff whose roles are at least partially dedicated to advocacy. However, survey responses also highlighted the impact of inadequate funding on centres' capacity to undertake this work. For example, one participant reported:

*“all lawyers contribute a day a fortnight to projects on average as part of their KPI's (though this drops off in reality when we are short staffed).”*

We have also developed several case studies that demonstrate the sector's contribution to law reform and advocacy efforts:

- At the local level to highlight to governments the impact of law and policy changes on people and communities experiencing disadvantage, discrimination, and violence
- At the state and commonwealth level to contribute specialist expertise to state- and nation-wide review and reform processes designed to deliver benefits across the community as a whole
- At the international level, to promote the recognition and protection of the human rights of priority groups for legal assistance under NLAP, including women and older persons.

Collectively, these case studies demonstrate the volume of law reform work individual centres undertake and the time it takes (often over many years), the significant, systems-wide impacts it delivers, the fact that much (and for some centres all) of this work is unfunded, and the extent to which governments rely heavily on our sector's expertise to design and implement systemic reforms. We have provided these case studies to the review separately.

The community legal sector is unified in its support for adequate recognition and funding for advocacy work under the next NLAP. This funding must be distributed with sufficient flexibility to enable all centres to use it to address their unique priorities and to suit their unique circumstances.

## Recommendations

Commonwealth, state, and territory governments should:

- Include in the next NLAP an affirmative statement about funded centres' entitlement to advocate in the next agreement, including the right to engage in strategic systemic advocacy
- Provide adequate funding for law reform and advocacy, including at a minimum:
  - Additional Commonwealth funding for the national community legal sector peaks and an obligation on states and territories to establish properly funded sector peak bodies in all jurisdictions
  - Additional Commonwealth and state and territory funding for generalist and specialist centres to engage in law reform, advocacy, and communications, as part of business-as-usual service delivery
  - Sufficient funding to enable all specialist and generalist community legal centres to undertake strategic, systemic advocacy, as well as participation in government-driven law reform and policy consultation processes
  - Resourcing for local, state and territory and national community and sector engagement work, including through local community development and organising, and national and state-based policy networks.
- Deliver additional funding to support the community legal sector's advocacy work with sufficient flexibility to enable all centres to use it to address their unique priorities and to suit their unique circumstances.

## Building a resilient, skilled workforce, capable of meeting complex needs

Funding community legal centres to provide adequate pay and conditions to workers is not just 'more money for lawyers.' Legal assistance lawyers are unique amongst the legal profession. Our work contributes directly to the achievement of all five of the Commonwealth government priorities set out in its first national wellbeing framework, Measuring What Matters.<sup>16</sup> Our mission and values more closely align with those of the not-for-profit community services sector, than those of private, commercial law firms.

Community legal services agree that poor employment conditions, including low remuneration, limited career pathways, and the high risk of vicarious trauma and burnout negatively impacts centres' ability to attract and retain expert staff. This impacts centres' ability to meet people's and communities' needs for legal assistance. Through our national consultations, centres reported on the impacts of the 'juniorisation' of the workforce, the drain of experienced, senior lawyers, to LACs and the private sector (and from RRRR centres to the cities), and of widespread vacancies across the sector, particularly in RRRR

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<sup>16</sup> Australian Government – The Treasury (2023). Measuring What Matters: <https://treasury.gov.au/policy-topics/measuring-what-matters>

centres. Some centres in the Northern Territory report being unable to fill vacancies for more than a year, leaving some centres to run without a dedicated Principal Solicitor (with CEOs providing this function as well as their executive and administrative responsibilities).

The community legal sector supports increased funding to enable centres to offer pay parity with LACs, including where funding for LACs is increased to deliver pay parity for LAC lawyers with state government wages for legal officers.

There is extensive work happening across the community legal sector that attempts to cost achieving wages parity for community lawyers with LAC lawyers. Data from the national State of the Sector Survey for 2022 – 23, shows that participating centres had Full Time Equivalent (FTE) staff ranging from 0 (volunteers only) to 110, with an average of 20.5. The median centre had an FTE staff of 13.5. The survey also asked centres how many additional FTE staff (across different roles) they would need, *and could reasonably absorb*, to meet demand for services. The average total need for additional staff reported was 12 FTE staff per centre. That is, participating centres reported that, on average, they need to increase their FTE staff by 58.7% to meet legal need.

Community Legal Centres NSW recently completed a project to benchmark community legal sector salaries against those offered by Legal Aid NSW. The exercise revealed that, on average, junior solicitors in entry level roles in the community legal sector earn 10% less than their LAC colleagues. Further, the difference in pay increases as solicitors become more senior, with senior and principal solicitors at Legal Aid NSW earning up to 25% more than those working at community legal centres.

Community Legal Centres Queensland has also recently completed a comprehensive workforce survey, which included separate questionnaires for centres and workers. The survey report, which Community Legal Centres Queensland has attached to its submission in full, details the challenges organisations and workers in the community legal sector face due to low wages and poor employment conditions.

We refer the Review to the Community Legal Centres NSW and Community Legal Centres Queensland submissions for more detail on the findings from these recent studies.

We also note that remuneration is only one aspect of providing a safe and supportive workplace, particularly in the context of providing services to people with complex needs, and with a high risk of vicarious trauma. In addition to increased funding to pay competitive wages, community legal centres must be properly funded to provide:

- Adequate supervision, including culturally safe supervision for Aboriginal and Torres Strait Islander workers
- Training and development opportunities
- Corporate services, including payroll and human resources.

Community Legal Centres Australia contributed to the development of the Australian Legal Assistance Forum's Joint Workforce Statement, and we endorse its recommendations.



## Recommendations

Commonwealth, state, and territory governments should:

- Increase investment in the legal assistance sector to deliver pay parity across the legal assistance sector on a same work, same pay principle
- Invest in a national workforce development strategy to attract and retain a skilled, well supported, and diverse workforce to the legal assistance sector, which addresses (at minimum):
  - Remuneration and entitlements, including portable leave schemes
  - Consistent, efficient, and collaborative learning and development for all legal assistance workers
  - Career development pathways and strategies
  - The specific workforce challenges in RRRR communities
  - Recruitment and retention strategies
- Increase investment in the legal assistance sector to address workforce challenges in RRRR communities, including:
  - Targeted graduate programs to attract new community lawyers, with a focus on Aboriginal and Torres Strait Islander graduates
  - National campaign and tailored incentives to attract law graduates and other professionals to work in RRRR legal assistance services for a set minimum period, including HECs debt waivers, one-off relocation payments, increased salary or leave entitlements.

We refer the Review to the ALAF Joint Workforce Statement for further details.

## Meeting people's needs through innovation, prevention, and integrated approaches

### **Integrated, holistic services and early supports are central to the community legal centre model, but this work is not always properly measured or acknowledged.**

From the outset, community legal centres have resisted the notion that lawyers were the solution to everything. Our sector recognises that people's legal issues are often connected to other social and economic problems and that the best supports address all these challenges together. Community legal centres aim to remove barriers to justice, safety, dignity, and wellbeing faced by people who experience systemic disadvantage, discrimination, and gender-based violence. The way each centre is structured, and the way the sector works together, is reflective of this model and these priorities. Centres utilise a range of multi-disciplinary approaches, employing community service professionals with a range of qualifications and expertise.

Responses to the national State of the Sector Survey show that:

- 76.8% of surveyed centres employ people across a range of community service roles, including:
  - 50% of centres employ social workers, case workers, or counsellors
  - 32.1% of centres employ identified Aboriginal community engagement or support workers
  - 26.8% of centres employ community development/engagement workers.

- 21.4% of centres employ financial counsellors
- 23.2% of centres employ a wide range of other positions including client services and support officers, disability justice liaison officers, financial, industrial, disability, and tenants' advocates, mental health clinicians, partnership co-ordinators, and policy officers.
- 71.4% of surveyed centres engage in partnerships with other service providers to deliver holistic services to their communities, including:
  - 46.4% with domestic violence services or shelters
  - 33.9% with hospitals or health services
  - 26.8% with Aboriginal community-controlled organisations
  - 17.9% with mental health services
  - 14.3% with youth services
  - 33.9% with other services including homelessness services, neighbourhood centres, refugee services, schools and universities, and LACs.

Community legal centres employ lawyers, social workers, financial counsellors, tenant advocates, community development workers and more. Our sector's integrated practice – delivery of trauma-informed legal services and non-legal casework by one single centre – has been a hallmark of the community legal centre service model from the beginning.

However, in some jurisdictions, state and territory government funding contracts limit centres to using NLAP funds for legal roles and services, based on an erroneous interpretation of the agreement. Further, centres are not required to report on non-legal work in the same way they are legal work, and so the immense value this work brings is un- or under-reported. Integrated practice service can often be time- and resource-intensive, and current approaches to reporting service outputs do not accurately capture the benefits they deliver. The NLAP agreement should support the integrated service model many community legal centres know to be most effective at supporting the people and communities they work with.

### **Community legal centres collaborate effectively to meet needs holistically.**

Community legal centres are independent, grassroots organisations and maintain a strong level of collaboration across the sector. The unity and connectedness of the centres in our sector ensures a network of services on which the community can rely for both place-based and specialist supports.

The earliest community legal centres were 'generalists', helping people in need with all kinds of civil, family, and some criminal law problems. Local, generalist community legal centres are deeply embedded in the communities they serve. They have built up longstanding trust, local knowledge and relationships that make them invaluable place-based services.

The community legal sector also understands the critical importance of specialisation. The establishment of specialist community legal centres was driven by expertise and grounded in personal experience – women established women's legal centres on feminist principles, and people with disabilities set up disability legal centres as rights-based services, to name just some examples. Our sector has centres working in employment law, environmental justice, immigration and refugee law, social security and economic justice, renters' rights, seniors' rights and elder abuse, young people, issues for Aboriginal and Torres Strait Islander women and children, public interest litigation (and others). The community legal sector's unparalleled national centres of excellence in these areas act as a resource for the entire legal assistance sector.

Together, community legal centres form an integrated service-system. We are a dynamic network of generalist, place-based and specialist statewide services that work together to respond quickly and flexibly to changing community needs. As a sector, we can work together to challenge systemic issues more effectively than other independent organisations that operate in silos.

This collaborative, partnership approach is critical to the people and communities we support. However, centres require significant resources (both time and financial) to develop and maintain partnerships effectively.

Community Legal Centres Australia strongly supports funding legal assistance providers to deliver early intervention and integrated, social and community services, that reduce or prevent harmful contact with justice systems for people experiencing disadvantage. Community legal centres are particularly well-placed to deliver these services, which have been part of our service model for 50 years. Community legal centres understand that our legal and social systems often cannot be trusted to deal fairly with people marginalised by the mainstream. Our sector recognises that often the best thing is to help people avoid the justice system altogether (or support their exit from it as soon as possible). Early intervention, and empowering communities to avoid legal problems, have been hallmarks of community legal centre services since the beginning and explain our traditional focus on community legal education programs.

### **Community legal education builds rights awareness and empowers people to address legal problems.**

Community legal education (CLE) is a key element of community legal centres' early intervention work. It benefits people, communities, and governments when people can recognise their problems as legal as early as possible, are aware of free, local services that can assist them, and feel empowered to seek support to resolve them before they escalate.

However, CLE can also drive increased demand for community legal centre services. As people's knowledge of their rights and legal remedies grows, they are better able to recognise their problems as legal problems and seek assistance to resolve them. In the current constrained funding environment, many community legal centres report actively limiting the number of CLEs they deliver as they do not have the resources to meet the additional demand that flows from them.

Community legal centre funding for vital CLE work must be matched by appropriate funding to meet the increased demand for services that CLE generates.

### **A shift to impact evaluation is needed to better capture the outcomes of early intervention.**

The immense benefits of CLE and other activities that community legal centres carry out to reduce or prevent legal need are not properly reflected in current funding and reporting models. Adequate funding to shift the sector towards outcomes-based funding and reporting would support better measurement of the impacts of these activities.

The current reporting model focuses on quantitative outputs. When looking at the outputs data related to intensive prevention work, the numbers can look low. However, the longer-term impacts for people, communities and governments are immense – far greater than the impacts of providing high numbers of basic legal advices.

Early intervention activities may be resource-intensive, but the costs associated with failing to intervene early can be immense. The Federation of Community Legal Centres recently

made a business case for the value of these activities, through analysing various client journeys. This research demonstrates the downstream costs avoided through interventions at different points in the escalation of people’s legal problems.<sup>17</sup> This work demonstrates the great outcomes that can be achieved through early intervention, and shows the incredible cost-effectiveness of these interventions. The report demonstrates how investments in community legal centres can generate huge savings to governments and the community. We refer the Review to the submission of the Federation of Community Legal Centres (Vic) for further information on the findings of the business case information and demand modelling conducted by Ernst and Young for Victorian community legal centres in 2020.

Our sector supports additional funding for community legal centres’ legal and non-legal early support services to help prevent or limit harmful contact with justice systems. In addition:

### Recommendations

- The government should fund more comprehensive research into the avoided costs through CLE and other early intervention activities
- Community legal centre funding and reporting models should more accurately reflect the benefits and avoided costs of the different types of work our sector carries out.

### Strong peaks. Strong sector.

Strong peaks are valuable to individual centres, the wider legal assistance sector and to governments. Together, the national, state and territory community legal sector peaks represent about 165 community legal services, including 134 community legal centres, eleven FVPLSs, and two ATSILSs. Collectively, we support community legal services to deliver high-quality and valued legal assistance services to people and communities, by providing them with a range of services. These include:

- Leadership and coordination
- Accreditation and quality assurance
- Data analysis and reporting
- Capacity building and sector development, including regular, training, conferences, and networking events
- Cost-effective access to products and services, such as insurance and legal research resources
- Sector engagement, including through policy and practice networks
- Law reform and advocacy.

Currently associations of community legal centres in the NT, South Australia, and Tasmania receive no funding (or very limited project-based funding) to deliver these functions. This leaves centres in these jurisdictions reliant on the national peak for some of these services (like accreditation) and without any access at all to others.

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<sup>17</sup> EY, *Meeting demand for community legal assistance*, 2020.

Where peaks do receive government funding, it is often does not reflect the true cost of delivering the full suite of services centres need. Peaks in all jurisdictions are forced to make. With sufficient funding national, state, and territory community legal sector peaks could:

- Provide more intensive sector development and capacity-building services to members
- Partner more fully with governments to provide advice on policy development and law reform, and increase our contribution to implementing justice system reforms
- Serve as a single voice to Commonwealth state and territory governments on access to justice issues.

### **Recommendation**

The next NLAP should commit the Commonwealth, state, and territory governments to properly funding community legal sector peak bodies in all jurisdictions. This includes:

- Establishing funded peaks in the ACT, NT, SA, and Tasmania
- Ensuring peaks in all jurisdictions receive funding sufficient to deliver effective supports and services to community legal services in their membership, including leadership and coordination, capacity building and development, accreditation and quality assurance, data and reporting, and advocacy and law reform.

## Non-NLAP Commonwealth funding streams

This section does not apply to funding streams used to support ATSILs and FVPLSs. In the opening section we made clear our support for these providers and the need for dedicated and significantly enhanced funding for their work.

We acknowledge that many community legal centres are dependent (some entirely so) on Commonwealth funding streams outside of NLAP. This includes streams administered by the Attorney-General's Department (such as the Community Legal Services Program (CLSP)), as well as by other government departments, such as Social Services, Health, Home Affairs, and the Office for Women. Community Legal Centres Australia is an example of an organisation dependent on non-NLAP streams, with all our government funding coming via the CLSP.

Generally, these centres experience the same challenges meeting increasing demand for legal assistance services with insufficient resources as centres that receive most of their funding via NLAP. In line with our recommendations about the need to significantly increase Commonwealth funding for community legal centres via NLAP, we recommend that the quantum of these non-NLAP funding streams also be increased.

For some centres that offer services nationally (for example, Arts Law Australia, the Australian Centre for Disability Law, the Environmental Defenders Office, Financial Rights Legal Centre, knowmore, JobWatch and Youth Law Australia), there are real benefits in maintaining a direct relationship with the Commonwealth. Benefits include reduced reporting burdens (at least in relation to Commonwealth funds – the reporting burdens faced by centres that rely on multiple state and Commonwealth Government funding streams are discussed further in the efficiency section below). They may also include effective relationships with government funding administrators who have built up expertise in relevant areas of legal practice. It is important that this expertise continues to be applied to the management of these specialist funding streams. Direct links with the Commonwealth around national work might for some centres be sensibly accompanied by state and territory funding for state and territory activities, with this funding offering some security in case Commonwealth funding is reduced or withdrawn.

Many of these non-NLAP-funded centres that participated in national consultations on this submission expressed the view that the specialist funding streams that sit outside of NLAP should remain external to NLAP.

Some specialist centres (including those that provide refugee and immigration legal service, animal law services, LGBTIQ+ services, and pro bono services), receive no NLAP funding at all, or are funded inconsistently across jurisdictions. These services are not specifically excluded from NLAP funding. However, in some jurisdictions state governments allocate Commonwealth NLAP funds to them, and in others they do not. For example, the Refugee and Immigration Legal Service (RAILS) in Qld and Circle Green Humanitarian Service in WA receive NLAP funding, while refugee legal services in NSW, Victoria, and Tasmania do not. In these centres' experience, the lack of transparency around funding allocations, makes it difficult to understand why some receive NLAP funding and others do not. Better alignment of funding allocations to the principles outlined in NLAP, and transparency

around decision-making and funding flows, are important objectives and discussed further in the efficiency section below.

Elsewhere we have advocated that, as a general rule, no centre should receive less funding in real terms than it does at present. This principle should apply to centres that receive NLAP funding and centres that receive non-NLAP Commonwealth funding. This is important for ensuring continuity of service provision to those communities dependent on existing legal services. It is also important that, when governments make decisions around which centres can apply for funding, these decisions are transparent and grounded in the principles outlined in NLAP. All centres accredited under our National Accreditation Scheme have the capacity to deliver high-quality NLAP services for communities in need, whether or not they are currently funded via NLAP.

## Demand over time

Community Legal Centres Australia is open to considering extending the life of the next NLAP agreement from five to 10 years, in circumstances where there is broad satisfaction with the model proposed. However, government must deliver sustainable, and viable funding for community legal centres, before adopting a longer agreement.

During our national consultations, centres expressed mixed views on the risks and benefits an extended agreement might present. On the one hand, a 10-year agreement could provide much-needed security and provide a solid foundation for longer-term service planning. On the other, however, centres expressed real concerns about:

- Problems with the current agreement that would need to be addressed to secure support for a longer agreement
- The need for inbuilt mechanisms in a longer agreement to account for changes, including unforeseen changes and government policy decisions that impact demand for legal assistance and centres' capacity to meet demand (for example, Covid, high inflation, the Government's decision to increase minimum employer superannuation contributions, and Fair Work Commission increases to the SCHADS award).

The current NLAP was meant to deliver funding security for legal assistance providers, particularly community legal centres. In practice, however, achievement of this aim has been patchy across jurisdictions, with only governments in the ACT, Qld, and SA, signing five-year funding contracts with centres. Centres in other states and territories continue to operate under funding contracts of shorter duration.

To improve funding security for community legal centres, we strongly support guaranteed 5-year service contracts for all Commonwealth funding. Funding should be allocated in one go and with no split between baseline and Family Law Family Violence allocations. This effort to deliver secure funding should not be restricted to Commonwealth money. State and territory governments should allocate *all* legal assistance funding – Commonwealth funding and their own – in one go and for a minimum five years. Community legal centres rely on both streams, and it is fiction that confidence in one stream constitutes funding security. Unless centres can have long-term confidence in their income from both Commonwealth and state and territory streams, they will never have the funding security required to retain staff and undertake long-term service planning. Governments should continue to be required to give 6 months' notice of any change in funding. Providing funding allocations in one go, up-front, would give centres greater flexibility to manage fluctuations in demand, staffing, and operational costs over time.

Under a longer agreement, funding security could be delivered by building in contractual review points at regular intervals. At each review point, the parties can make required adjustments, but the expectation should be that all things being well, the contract would be renewed. We understand a similar approach may be being considered for homelessness services through the Commonwealth Department of Social Service's current process to develop a new National Housing and Homelessness Plan (based on recommendations from the Productivity Commission's recent review). However, we note that development of the plan is in its early stages, and further work would be required to understand and assess the implications of such a proposal for community legal centres.

Adequate indexation (addressed in the previous section on funding models) and locking in better practices for responding and adapting to change – as well as capability to change elements of the agreement that do not operate as intended or become unfit for purpose – would also be important factors in securing the community legal sector's support for a longer agreement.

A longer agreement would also need better practices for adopting and absorbing change. Under the current agreement, seven new funding streams have been introduced since 2020. While centres have welcomed the additional income these streams have delivered, most have come with additional reporting burdens. For many centres, particularly smaller centres with limited administrative capacity, they have been difficult to absorb. Ensuring the next agreement provides adequate baseline funding for community legal centres would go some way to addressing this issue.

### Recommendations

The next NLAP should:

- Cover a five-year period from 2025 - 2030
- Deliver funding security for all funded community legal centres, by mandating five-year funding contracts under the next agreement
- Allocate all funding (Commonwealth and state and territory) to community legal centres in one go, with no split between Commonwealth baseline and Family Law Family Violence allocations.

If a 10-year partnership agreement is to be considered, Commonwealth, state, and territory governments should partner with legal assistance providers to ensure a longer agreement includes:

- A significant increase in baseline funding that accounts for objective measures of legal need, and limits the need for multiple, additional one-off injections over the life of the agreement (to the extent possible)
- An adequate indexation clause
- Sufficient flexibility to ensure centres can adopt and absorb change.



## Disadvantaged groups

The community legal sector strongly supports inclusion of women, refugees and asylum seekers, LGBTIQ+ people and people impacted by extreme weather events and climate change as priority groups in the next NLAP:

### Women

Community legal centres strongly supported the inclusion of women as a distinct priority group that is broader than people experiencing domestic and family violence. Women face other legal challenges beyond violence, including workplace sexual harassment, insecure employment, the gender pay gap, and financial insecurity.

Older single women are experiencing high and growing levels legal need, driven by increasing rates of poverty and homelessness. Young mothers have also been identified as having unique needs – especially young mothers still in the education system.

Every state and territory government has added women as a priority category under their legal assistance strategies. The NLAP should do so, too.

### Refugees and asylum seekers

Refugees and asylum seekers should be included as a category distinct from people from culturally and linguistically diverse (CALD) communities. Immigration and refugee law are complex, specialist areas of law, and refugees and asylum seekers are a group of people that many legal services cannot assist.

We believe political motivations have contributed to the exclusion of most refugee legal services from government funding. Refugee legal centres have been strong critics of Commonwealth Government refugee policy over the last decade. Excluding these services from Commonwealth funding limits the resources available to them services to challenge unfair government decisions.

Some services that support refugees and people seeking asylum do receive money from their state governments, but not all. One service reports their state government maintains that as the service works in the federal jurisdiction, the state will not step in.

We note that 'CALD' is now no longer a preferred term. The community legal centres that work with diverse cultural groups most often support refugees and asylum seekers, migrant workers, non-resident migrant women experiencing domestic and family violence, and international students. We recommend the next NLAP should include these distinct categories rather than people from CALD communities.

### LGBTIQ+ people

There are specific legal issues that face members of the LGBTIQ+ community. Despite being one of the key demographic groups identified as having a greater need for specialist funded legal assistance, in both research and key policy reports, the Commonwealth government provides no dedicated funding for LGBTIQ+ legal assistance services.

Existing services for LGBTIQ+ communities are poorly funded and patchy. In five out of eight states and territories, LGBTIQ+ people have no access to a specialist services or programs. Existing LGBTIQ+ services are delivered via a mix of State Government funding, grants, philanthropic donations, and substantial pro bono support.

LGBTIQ+ people overwhelmingly express a preference for accessing specialist LGBTIQ+ services and generalist services that are LGBTIQ+ inclusive, and almost half report they would be less likely to access legal help at all in the absence of such services (source: LGBTIQ Legal Needs Survey, 2023).

The trans and gender diverse community face significant unmet legal need, especially surrounding documentation, and discrimination at work and in other parts of public life. For trans people, there is a significant overlap between health needs and legal needs – legal gender recognition is a health issue.

LGBTIQ+ legal services provide specialist legal support to the LGBTIQ+ community and build the entire sector's capacity to appropriately support LGBTIQ+ clients. They are also frequently called on to provide expert input into laws, policies, plans and procedures, to ensure they are inclusive and culturally responsive.

### People impacted by extreme weather events and climate change

As climate disasters increase in frequency and severity, increasing numbers of people will be impacted by the legal dimensions of these events. Community legal centres in disaster-prone areas already do significant work in both disaster response, and disaster resilience and preparation, on extremely limited resources.

In addition to recognising people impacted by climate disasters as a priority group for legal assistance under the next NLAP, governments must also:

- Include funding for disaster response and recovery in baseline community legal centre funding
- Fund community legal centres to carry out crucial disaster risk reduction, disaster preparedness and community resilience-building work.

### **Other groups experiencing disadvantage in need of targeted legal assistance.**

Other suggestions we've received through consultations to date include people with limited access to technology or technological literacy, a specific reference to people with poor literacy and numeracy (noting that low educational attainment is currently on the list but is not always an indicator of literacy), people experiencing mental ill-health and trauma, Aboriginal and Torres Strait Islander artists, renters, people impacted by persistent postcode injustice (that is, who live in postcodes where disadvantage is systemic and entrenched), sex workers, prisoners, sole traders and small business owners impacted by extreme weather events.

#### Recommendation

The next NLAP should include the following priority groups:

- Women, as a group distinct from people experiencing domestic and family violence
- Refugees and asylum seekers, as a group distinct from people from culturally and linguistically diverse (CALD) backgrounds
- LGBTIQ+ people
- People impacted by extreme weather events and climate change.

## Efficiency

The community legal sector strongly supports streamlined reporting processes for legal assistance services. Funders' administrative processes place significant unnecessary burdens on legal assistance providers. For relatively small, independent community legal centres with very lean administrative capacity, and that often receive small amounts of funding from multiple government and non-government sources, administrative burdens are particularly onerous.

Gippsland Community Legal Service (GCLS) lawyers provide a family violence intervention order duty service at Latrobe Valley Magistrates' Court, the Gippsland region's busiest local court. Duty lawyers regularly see 15 clients per day, all of whom are experiencing domestic and family violence. The Data Standards Manual requires GCLS to record data across 40 separate mandatory fields for each client. This means that on a regular day, lawyers are required to record 600 individual data fields and spend one hour and 15 minutes collecting data with clients each day. This equates to 5 minutes, or 17% of the total time spent, with each client.

Further, due to connectivity issues and a lack of government investment in technology to address them, lawyers often record data on a paper form, and later enter it manually to the GCLS practice management system. This is highly inefficient, increases the risk of error (and the potential for data quality to be undermined), and, most importantly, takes up time that lawyers should be dedicating to core business – supporting people experiencing domestic and family violence to understand and resolve their legal problems.

We refer the Review to GCLSs submission for more detail about this and other examples of the burden and inefficiencies created by NLAP data and reporting requirements.

Centres that receive baseline NLAP as well as top-up funding during the life of the agreement (for example, recent injections to respond to COVID, disasters, and to increase services for vulnerable women) are required to report separately on top-up funding received, often in ways that are not consistent with reporting for baseline funding.

Centres that do not receive baseline NLAP funding but do receive small amounts of top-up funding (for Covid, disasters, etc.) are held to the same data and reporting standards as centres that are fully funded via NLAP. For small centres that do not have access to CLASS, this creates unnecessary and unnecessarily onerous reporting burdens.

Centres that operate nationally and receive Commonwealth funding via non-NLAP streams (such as the Community Legal Service Program), as well as income from multiple state governments (and often non-government sources as well), are often required to report the same information to different entities, in different ways and within different timeframes. This duplication of reporting takes time, which most centres could better spend on delivering services or advocating for systems reforms.

For example, ArtsLaw, a national specialist centre that supports Aboriginal and Torres Strait Islander artists, receives small amounts of funding from eleven different Commonwealth, state, and territory government departments. This generates an enormous amount of work for the centre, as many of its funders require reporting (of similar information) through different platforms. The centre also relies on philanthropic grants to increase their outputs and impact, which adds to their reporting burden.

Centres that deliver services across state borders face unique reporting challenges. For example, the Hume Riverina Community Legal Service, which provides services in

southern NSW and northern Victoria, received mental health funding from both the Victorian and NSW Governments. Despite coming from the same Commonwealth funding stream, each state government sets completely different contracting and reporting requirements, with no recognition of the time needed to complete reporting work for the same funding pool twice.

We recommend that Commonwealth, state, and territory Governments partner with community legal centre peaks to develop and implement a single, annual reporting process for all Commonwealth and state community legal centre funding, including baseline and top-up NLAP funding. This would lead to an immediate and significant increase in sector productivity.

### Recommendations

The Commonwealth and states and territories should work together to:

- Partner with legal assistance providers to develop and implement a single, annual reporting process for all Commonwealth and state legal assistance funding for community legal centres, including baseline and top-up NLAP funding
- Report annually to community legal sector peak bodies, and publicly, on progress towards this aim.

## Data

Our sector is committed to collecting quality data that can inform our practice and support us to deliver the best, most impactful services for our communities. We also understand that governments are accountable for the taxpayer funds they provide to services and that we must demonstrate our value.

### **Governments have not articulated a clear purpose for data collection under this NLAP.**

This NLAP has been characterised by Commonwealth demands for data when the need for this data has not been demonstrated and where it cannot be meaningfully used. Governments at state level have also sought data without clear purpose. There is little feedback to the sector on what governments use our sector data for, and there has been too little progress towards impact evaluation under this NLAP.

Perhaps two examples best illustrate the failings of the current NLAP in relation to data collection:

- The 'estimated time spent' pilot. This required centres to engage in a time-consuming exercise to estimate the average time spent on certain legal matters, only to have the pilot abandoned as a pointless waste of time
- The provision of unit-level data to the Australian Bureau of Statistics (ABS) under Schedule D of the NLAP. This process has collectively taken the sector hundreds of hours to generate data across dozens of domains in circumstances where even the

ABS acknowledges there will be meaningful data in very few areas and, even where some data may have some meaning, the purpose of its collection remains unclear. There has been no indication as to the value of this data collection.

Centres report frustration that there is no evidence that their reporting to the Commonwealth matters or is used to inform investment decisions. If centres must report data to governments, we must also understand how that information is being used (or if it's not). Time spent collecting data required by the Commonwealth, with no feedback as to whether it is useful or relevant to government decision making, takes up too much of centres' limited time. Stretched centres might otherwise spend this time collecting information that is useful to their own service planning and advocacy.

### **The community legal sector has been underfunded to meet data and reporting requirements.**

Data collection (and reporting) is burdensome, and the sector has been underfunded to meet demands. We understand that the Commonwealth wants better data on what our sector delivers and achieves, to justify ongoing expenditure. In turn, we want to work in partnership with governments to collect the right data and analyse it in ways that support continuous improvement. This requires better data systems and client management system (CMS) tools, which are expensive to adopt and involve ongoing costs. CLASS has not delivered sufficiently for our sector and cannot compete with the service offerings of commercial CMS tools. Despite uptake of modern CMS tools by about 30% of centres to date, smaller centres simply don't have the resources to invest in the technology needed to improve data capture and reporting. To address this, the next NLAP should focus on:

- Bringing all centres to a level playing field in terms of their information and data technology infrastructure. This includes, at a minimum, sufficient funding for all centres to adopt and maintain professional, modern CMS tools, and build organisational capacity to conduct effective and consistent data collection and reporting
- Building the national peak's capability to deliver efficient and effective data reporting services. This includes sufficient funding to develop appropriate information and data technology systems to act as custodian for the sector's national dataset, to support consistent data collection and reporting practices across the sector and deliver real-time reporting and data visualisation services.

Community Legal Centres Australia has worked with centres nationally to develop a vision for the sector's future in information, communications, and data technology (ICDT) and mapped out a transition plan to achieve this vision by 2025. This vision will see the national peak continue to play a critical role in data reporting, and as custodian of the sector's national dataset. However, this vision will require all community legal services to build or purchase their own CMS tools, which can send data to Community Legal Centres Australia's national data repository with limited customisation.

### **The community legal sector needs significant additional resources to modernise our ICDT systems and practices.**

Realising our vision will only be possible with significant additional government investment. Given the value governments place on data, and the burden reporting to governments places on centres, governments have a responsibility to fund our data future. CLASS cost more than \$3 million to build it costs a further \$1.3 million per year for Community Legal Centres Australia to run CLASS. We are in the process of calculating what it will cost to

build a national data repository and for Community Legal Centres Australia to deliver data reporting and visualisation services as part of our vision for the future. Adopting CMS tools will also create additional costs for centres. Most tools are priced per month, with various price points based on available features and numbers of users. Many community legal services will also need support to build internal capacity to learn and use these new systems and to create and fill specialist IT and data roles. While some centres, particularly in NSW and Victoria, have already adopted CMS tools or are in the process of doing so, many cannot currently and will remain unable to do so without additional funding.

As stated elsewhere, community legal centres strongly support the next NLAP including a clearer guide to, and timetable for, the shift to impact evaluation and a commitment from governments to ensuring this does not undermine the impact work done already by centres in several states. The data centres will be required to collect, and report, will likely look very different from the service output data currently required. The cost to centres of transitioning to outcomes measurement must be factored into decisions about the quantum of funding required to adequately support centres to adopt modern data collection and reporting practices.

**The next NLAP must address legal professional privilege and the barriers legal assistance providers face meeting requests to provide unit-level data to government.**

As legal practices, community legal centres provide legal advice, and receive personal information from clients that is subject to legal professional privilege and in respect of which they owe a duty of confidentiality. Most community legal centre clients experience a range of vulnerabilities. Their legal problems often involve disputes government departments and agencies, including:

- Department of Social Services (Centrelink, Child Support)
- Department of Communities (Housing, Child Protection)
- Department of Home Affairs (Immigration)
- Police.

Where community lawyers are required to provide governments with certain personal information concerning clients, they must advise or warn potential clients before seeking instructions or providing legal advice. If asked, many clients would refuse to provide their personal information to a legal assistance provider, knowing it could be passed onto government.

It is crucial that any national partnership agreement upholds citizens' fundamental rights, including legal professional privilege. It is also important that government decisions are based on sound data and evidence. Service data is important information for government decision-making and oversight. The current NLAP data strategy does not address the issue of legal professional privilege and the barriers legal assistance providers face meeting requests to provide unit level data to government.<sup>18</sup> Given the impracticalities of obtaining informed consent for the release of client information for every service provided under the NLAP,<sup>19</sup> community legal centres have been faced with the challenge of undertaking significant and complex data work to ensure that clients cannot be identified in any way from the unit level data we have been compelled to provide to government or other external

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<sup>18</sup> Attorney-General's Department, Australian Government, 'National Legal Assistance Data Strategy' (2021) 6,8-9,15-16.

<sup>19</sup> For example, it would be hugely problematic to collect consents for services provided via advice lines, and any attempt to do so would likely result in people being unwilling to access the service.

agencies. Nationally, a failure to understand these important ethical obligations and the work required to deidentify the data has resulted in delays to the provision of unit level data under Schedule D of the NLAP and has been a source of stress and frustration for many community legal centres. It has also required many hours of work from principal solicitors in community legal centres whose priority under NLAP should be frontline service delivery.

The key issue is that requests for data in the next NLAP need to be focused on the benefit to clients and potential clients. They must also account for the duty of confidentiality in the Australian Solicitors Conduct Rules (or equivalent Legal Profession Conduct rules in each jurisdiction). At present the NLAP does not address this issue directly.

Our sector's perspective has been informed by the experience of WA centres, which first experienced unit level data collection under an exercise conducted by the WA state government. To complete this exercise, the state peak, Community Legal WA, had to work with and support its membership to devise and implement a solution that protected clients' rights to legal professional privilege. This process involved considerable investment of resources but has enabled the WA sector to develop significant expertise in this area.

It is vital that the Commonwealth, state governments, third parties (such as the ABS), peak bodies and legal assistance providers work together to develop agreed processes and data governance that enables appropriate data to be collected for NLAP monitoring while protecting the fundamental rights of clients and minimising administrative burden on services and to provide resourcing for adequate capability building and technical support.

### **Recommendations**

Commonwealth, state, and territory governments should:

- Partner with legal assistance providers to develop an improved approach to data collection that is clear about purpose, considers burdens on data collectors and funds the sector to do this work
- Provide significant additional funding for community legal centres to realise our ICDT vision for the future
- Provide a clearer guide to, and timetable, and adequate resourcing for the shift to impact evaluation and outcomes-based reporting. Governments must also commit to ensuring this work does not undermine the impact work already done by centres in several states, including NSW, Qld, and Vic
- Develop an updated legal assistance data strategy under the next NLAP that:
  - Explicitly recognises legal professional privilege, the duty of client confidentiality and State and Commonwealth privacy laws
  - The access to justice, technical, and resource implications for the collection of data from clients for legal assistance providers.

## Commonwealth administrative review

Community legal services that support people to appeal Federal Government decisions (in relation to social security, the NDIS, and immigration decisions in particular) have long advocated for additional funding to provide these services. This additional funding would recognise the complexity of these areas of law, the overwhelming barriers to justice people who seek our sector's assistance experience, and the significant power imbalance between people seeking administrative review and the Commonwealth Government.

Through our national consultations, centres that support people to challenge Commonwealth decisions at the Administrative Appeals Tribunal (AAT) noted:

- The behaviour of government decision-makers during internal administrative review processes (that is, before a matter progresses to the AAT) contributes to the high volume of appeals lodged with the AAT. Across the board, urgent reforms must be implemented to improve the transparency, and consistency, of departmental decision-making and internal review processes
- Ensuring the respondent is not legally represented at first instance may help to reduce demand for legal assistance. Instead, requiring case managers or early resolution teams from the respondent department to attend alternative dispute resolution conferences could help to even out the massive power imbalance between the applicant and respondent in proceedings.
- The Commonwealth outsources a lot of its work in the AAT to private law firms. In some jurisdictions, the behaviour of firms contracted can be a long way to the behaviour expected of a 'model litigant'. Where centres have raised the marked difference in approach between firms, it has been addressed. However, requiring legal representatives to comply with model litigant rules in AAT proceedings may deliver a more effective, systemic response to this issue
- Many people who appeal to the AAT have not sought legal advice, and often don't know they can access free legal advice. This contributes to the AAT's high caseload and significant backlog of matters, which combine to undermine the tribunal's purpose and create substantial barriers to accessing justice for everyday people
- Ensuring all applicants to the AAT have access to legal advice would require significant additional funding (including for specialist refugee and immigration, disability, and social security legal services), but this would likely still be cheaper than the current cost of funding the AAT to hear tens of thousands of unsuccessful appeals.



*The Welfare Rights Centre of NSW (WRC NSW) often ends up representing clients at the AAT because its internal appeals system at Centrelink is so appalling. If Centrelink could get their internal systems working properly and fairly, it could take pressure off the Tribunal. In WRC NSW's experience, most people who appeal a Centrelink decision to the AAT have never sought legal advice, and don't know the centre exists. Often, these people's cases are not strong, so they lose. These applicants would benefit from legal advice to strengthen their case or withdraw. The centre's reluctant view is that all people who lodge an appeal at the AAT should be referred for legal advice. This would require serious funding but would still be cheaper than dealing with the tens of thousands of unsuccessful appeals that are currently made each year.*

At a systemic level, the Commonwealth's current review of the AAT presents an opportunity to abandon the complexity of existing review procedures and implement substantial systems reform. Adopting human-centred design principles to develop a new system that is less adversarial, and more independent and investigatory, would go a long way to ensuring reviews are easy for people to navigate without legal assistance. We recognise however, that there will always be a role for lawyers, particularly legal assistance lawyers, to support people with complex needs to access justice through administrative review processes.

We note that specialist peaks and services that regularly support people to appeal Commonwealth Government decisions are best placed to make comprehensive recommendations about reforms to reduce demand for legal assistance services and improve outcomes for people. We refer the Review to submissions and recommendations made by specialist community legal sector peak, Economic Justice Australia, and community legal centres that offer immigration and refugee law services, or support people to challenge adverse decisions about NDIS entitlements.

### **Recommendations**

At a minimum, recommend the Commonwealth Government considers:

- Using the current review of Commonwealth administrative review processes to implement substantial reform, and adopt human-centred design principles to develop a new system that is less adversarial, and more independent and investigatory
- Conducting a government policy review to ensure current policy approaches are not unnecessarily generating legal need
- Amending relevant legislation to strengthen model litigant provisions (and ensure/improve their application to government agencies)
- Providing additional funding to community legal services to assist people seeking to review Federal Government decisions
- Providing clearer guidance on when an applicant should be guaranteed access to legal assistance when seeking administrative review.